XIII

GOVERNMENT
1869
N.W.P.

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR THE YEAR 1868-69.

Allahabad:

PRINTED AT THE GOVERNMENT PRESS, NORTH-WESTERN PROVINCES.

1869.

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR 1868-69

No 958 OF 1869

FROM

W C PLOWDEN, ESQ,

Secretary to the Board of Revenue of the North Western Provinces,

To

R SIMSON, ESQ,

Secretary to the Government of the North Western Provinces

DATED ALLAHABAD THE 31 AUGUST 1869

SIR,

REVENUE

Present

J F D INGLIS ESQ and H S REID, ESQ

I HAVE the honour to submit, by direction of the Board, their Legal Remembrancers' Report for the year 1868 69

2 The Divisional Statements which the Board require to enable them to compile this Report, were furnished by Commissioners on the dates noted below —

Meerut, ..	April 25th.	Benares,	July 13th
Rohilkund,	May 17th	Ajmere, ...	April 26th.
Agra,	May 31st.	Jhansie,	April 28th
Allahabad, ..	May 31st	Kumaon, .	May 3rd

3 The returns from the last three divisions were blank Those from Benares were received incomplete, on the 10th June, and, having to be returned for correction or explanation, were finally received on the 13th July.

4 It is with regret the Board again have to point to this division as delaying the submission of their Annual Report This delay is quite inexcusable, and could not possibly occur if due attention were paid to the compilation of the returns. The Board, therefore, cannot hold Mr Shakespear blameless in regard to the supervision of his office They earnestly trust, however, that this will be the last occasion they will have to notice him as retarding the despatch of their Reports

5 In the year under report, the number of cases in which Government has been concerned was 279 against 330 in the preceding year This is the lowest limit which the Government litigation has hitherto reached

6 Excluding miscellaneous applications, 204 suits and appeals were under trial during the year, against 244 in 1867 68 and 299 in the eleven months of 1866-67 Out of these 204 cases, 156 were instituted during the year, against 143 in the year preceding, of these, again, 55 were instituted by Government, and in 101 Government was impleaded, against 30 and 113, respectively, in the year 1867-68

7 In the accompanying Statement are shown the results of the year's litigation, and a classification of the suits and cases in which Government was concerned.

A.

Civil Suits in which Government was concerned during the year 1868-69, *from* 1*st April*, 1868, *to* 31*st March*, 1869.

Description of Litigation.	Government Plaintiff Suits.								Government Defendant Suits.													
	Pending at the close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on Cases Decided. For Government.	Percentage on Cases Decided. Against Government.	Pending at the close of last year.	Instituted during the year.	Total.	Decided. For Government.	Decided. Against Government.	Pending.	Percentage on Cases Decided. For Government.	Percentage on Cases Decided. Against Government.	Grand Total.	Total Cases Decided.	Decided in favour of Government.	Decided against Government.	Percentage for Government.	Percentage against Government.
Original Suits, ...	7	35	40	31	6	3	84	16	26	62	88	53	16	19	77	23	...	106	84	22	79	21
Appeals, Regular, ...	2	16	18	6	11	1	35	65	13	28	41	19	21	1	48	52	...	57	25	32	44	56
Ditto Special, ...	...	6	6	4	1	1	80	20	1	11	12	8	1	3	89	11	...	14	12	2	86	14
Applications, ...	6	34	40	27	2	11	93	7	10	24	34	5	23	6	18	82	...	57	32	25	56	44
Total, ...	15	89	104	68	20	16	77	23	50	125	175	85	61	29	58	42	...	234	153	81	65	35
Contract, ...	3	17	20	18	1	1	95	5	5	14	19	4	12	2	24	76	39	36	22	14	61	39
Exchequer, ...	...	...	...	...	...	...	...	...	4	2	6	3	2	1	60	40	6	5	3	2	60	40
Libel and Damages, ...	...	...	...	...	...	...	...	...	1	...	1	1	...	...	100	...	1	1	1	..	100	...
Confiscation, ...	2	11	13	6	6	1	50	50	12	20	32	22	8	2	73	27	45	42	28	14	67	33
Wards, ...	...	7	7	5	2	...	71	29	6	12	18	7	9	2	43	57	25	23	12	11	52	48
Crown-lands and Escheats, ...	5	19	24	12	9	3	57	43	5	35	40	25	6	9	81	19	64	52	37	15	71	29
To set aside Orders, ...	...	...	...	...	...	...	...	...	5	16	21	11	5	5	69	31	21	16	11	5	69	31
Trespass, ...	...	...	...	...	...	...	...	...	2	6	8	5	1	2	83	17	8	6	5	1	83	17
Trover, ...	...	...	...	...	...	...	...	...	2	2	4	2	1	1	67	33	4	3	2	1	67	33
Wages, ...	...	...	...	...	...	...	...	...	1	...	1	...	1	...	...	100	1	1	...	1	...	100
Costs, ...	5	35	40	27	2	11	93	7	7	18	25	5	15	5	25	75	65	49	32	17	65	35
Total, ...	15	89	104	68	20	16	77	23	50	125	175	85	61	29	58	42	279	234	153	81	65	35

8. Statement B shows the Suits, Appeals, and Applications classified according to Divisions :—

B.

Statement showing the Nature of the Suits in which Government was concerned in the several Divisions of the N.-W. Provinces.

		Contract.			Exchequer.			Libel and Damages.			Confiscations.			Wards Estates.			Crown Lands and Escheats.			To set aside Orders.			Trespass.			Trover.			Wages.			Costs.			Total.		
		Decided for Government.	Decided against Government.	Pending.	For Government.	Against Government.	Pending.	For Government.	Against Government.	Pending.	For Government.	Against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	Decided for Government.	Decided against Government.	Pending.	For Government	Against Government.	Pending	For Government.	Against Government.	Pending.	For Government.	Against Government.	Pending.
Meerut,	Government Plaintiff,	5	...	1	...	...	...	...	...	...	...	...	1	...	...	...	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	2	...	5	8	...	8
Ditto,	Government Defendant,	2	...	...	...	...	...	...	...	...	4	1	...	...	...	1	5	1	4	1	2	1	...	...	...	...	...	1	...	...	...	...	5	1	12	9	8
Rohilkund,	Government Plaintiff,	5	...	...	...	...	...	...	...	...	3	6	...	...	...	...	1	7	...	...	...	...	...	...	...	...	...	...	...	...	...	7	...	2	16	13	2
Ditto,	Government Defendant,	2	7	...	1	2	...	...	...	...	8	3	2	...	...	...	6	...	1	1	...	...	...	...	...	2	...	...	...	...	...	3	8	3	23	20	6
Agra,	Government Plaintiff,	...	1	...	...	...	...	...	...	...	2	...	...	...	...	...	9	2	2	...	...	...	...	...	...	...	...	...	...	...	...	3	2	2	14	5	4
Ditto,	Government Defendant,	...	5	1	1	...	...	...	...	...	...	...	...	1	...	...	4	3	2	4	...	1	1	1	1	...	...	...	...	...	...	...	1	1	11	10	6
Allahabad,	Government Plaintiff,	4	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	4	...	...	9	...	...
Ditto,	Government Defendant,	...	1	1	1	...	...	1	...	...	1	...	...	...	1	1	4	1	1	...	...	...	4	...	1	...	...	...	...	...	...	...	...	...	11	3	4
Benares,	Government Plaintiff,	4	...	...	...	...	...	...	...	...	...	...	...	5	2	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	11	...	2	21	2	2
Ditto,	Government Defendant,	...	...	...	...	...	1	...	...	...	9	4	...	6	8	...	6	1	1	5	3	3	...	...	...	...	1	...	...	1	...	2	1	...	26	19	5
Total,	...	22	14	3	3	2	1	1	...	...	28	14	3	12	11	2	37	15	12	11	5	5	5	1	2	2	1	1	...	1	...	32	17	16	153	81	45

B. B.

Statement showing Total Cases under Trial and Decided during the year, instituted by or against Government, classified according to the nature of the case, in the several Divisions of the North-Western Provinces.

		Pending.					Instituted.					Total.	For Government.					Against Government.					Pending.				
		Meerut.	Rohilkund.	Agra.	Allahabad.	Benares.	Meerut.	Rohilkund.	Agra.	Allahabad	Benares.		Meerut.	Rohilkund	Agra.	Allahabad.	Benares.	Meerut.	Rohilkund.	Agra.	Allahabad.	Benares.	Meerut.	Rohilkund.	Agra.	Allahabad.	Benares.
Original Suits,	Government Plaintiff, ...	1	5	.	1	...	5	3	14	3	8	40	5	4	10	4	8	...	4	2	...	...	1	...	2	...	...
	Government Defendant, ...	3	4	1	5	13	14	15	14	5	14	88	7	16	8	6	16	3	2	2	1	8	7	1	5	3	3
Appeals, Regular,	Government Appellant, ...	...	1	...	...	1	2	8	4	...	2	18	1	2	2	...	1	...	7	2	...	2	1	...	...	...	..
	Government Respondent,... ...	2	3	1	3	4	3	4	9	3	9	41	4	2	3	4	6	1	5	6	2	7	...	...	1	...	...
Appeals, Special,	Government Appellant, ...	...	...	.	...	...	1	2	1	...	2	6	...	2	...	...	2	...	...	1	...	...	1	...	...	...	...
	Government Respondent,... ...	...	...	..	1	...	1	3	1	1	5	12	1	2	...	1	4	...	...	1	...	...	..	1	...	1	1
Applications,	On behalf of Government, ...	...	2	...	2	2	7	10	4	3	10	40	2	8	2	5	10	...	2	...	...	...	5	2	2	...	2
	Against Government, ..	2	6	...	...	2	4	14	1	...	5	34	...	3	...	...	2	5	13	1	...	4	1	4	...	...	1
Total,		1	8	...	3	3	15	23	23	6	22	104	8	16	14	9	21	...	13	5	...	2	8	2	4	...	2
		7	13	2	9	19	22	36	25	9	33	175	12	23	11	11	28	9	20	10	3	19	8	6	6	4	5
Contract,		1	1	...	1	...	5	4	1	3	4	20	5	5	...	4	4	...	...	1	...	...	1	...	...	...	...
		1	2	1	1	...	1	7	5	1	...	19	2	2	...	...	...	...	7	5	1	...	...	...	1	1	...
Exchequer,		...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		...	2	1	1	...	...	1	...	...	1	6	...	1	1	1	...	...	2	...	...	...	...	...	...	...	1
Libel and Damages,		...	..	..	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		...	..	...	1	...	...	..	...	...	...	1	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Confiscation,		...	1	...	1	...	1	8	2	...	...	13	...	3	2	1	...	...	6	...	...	...	1	...	...	...	...
		1	2	...	1	8	4	11	...	...	5	32	4	8	...	1	9	1	3	...	...	4	...	2	...	...	...
Wards' Estates,		...	...	...	...	...	...	..	...	...	7	7	...	...	...	...	5	...	...	...	...	2	...	...	...	...	...
		...	...	...	2	4	1	..	1	...	10	18	...	...	1	...	6	...	...	...	1	8	1	...	...	1	...
Crown Lands and Escheats,		...	4	...	...	1	2	4	13	...	...	24	1	1	9	...	1	...	7	2	...	...	1	...	2	...	...
		1	1	...	1	2	9	6	9	5	6	40	5	6	4	4	6	1	...	3	1	1	4	1	2	1	1
To set aside Orders,		...	...	...	...	...	...	...	..	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	..	...	...
		2	1	...	...	2	2	...	5	...	9	21	1	1	4	...	5	2	...	...	...	3	1	...	1	...	3
Trespass,		...	...	...	...	...	.	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		...	...	..	2	...	...	...	3	3	...	8	...	...	1	4	...	...	...	1	...	...	...	...	1	1	...
Trover,		...	.	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		...	1	...	...	1	1	1	..	...	.	4	...	2	...	...	...	...	...	...	...	1	1	...	...	...	...
Wages,		...	...	...	...	...	...	...	...	...	...	...	..	...	...	...	...	...	...	...	...	...	...	...	...	...	...
		...	...	...	...	1	...	...	..	...	...	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...
Costs,		...	2	...	1	2	7	7	7	3	11	40	2	7	3	4	11	...	...	2	...	...	5	2	2	...	2
		2	4	...	...	1	4	10	2	...	2	25	...	3	...	...	2	5	8	1	...	1	1	3	1	...	..
Total,		1	8	...	3	8	15	23	23	6	22	104	8	16	14	9	21	...	13	5	...	2	8	2	4	...	2
		7	13	2	9	19	22	36	25	9	33	175	12	23	11	11	28	9	20	10	3	19	8	6	6	4	5

9. The anticipations expressed in paragraph 7 of the report for 1866-67, have been realized in the year under report, as well as in the year preceding. There has been an increase in the number of cases instituted by Government, and a decrease in those in which Government was put on its defence. This is still to be attributed to the causes indicated in the paragraph referred to above.

10. Analysing the results displayed in Statement A., we find of the 65 cases pending at the commencement of the year, 33 were original suits, in 7 of which Government was plaintiff, while in the remaining 26 Government was impleaded; 15 were regular appeals, 2 preferred by and 13 against Government; one was a special appeal preferred by Government; and 17 were miscellaneous applications, in 6 of which Government was the moving party.

Of the 214 cases instituted during the year, 95 were original suits, in 33 of which Government was the plaintiff, and in 62 the defendant, against, respectively, 20 and 79 in the preceding year; 44 were regular appeals, in 16 of which Government was the appellant, and in 28 the respondent, against 8 and 27 in 1867-68; 17 were special appeals, 6 of them promoted by Government, and 11 brought by other parties, against 2 and 7 in the previous year; 58 were miscellaneous applications, in 24 of which Government was the applicant, against 28 in 1867-68, while applications lodged by persons against Government have fallen from 44 to 24.

11. It will be observed that the number of appeals preferred has increased from 44 in the year 1867-68, to 61 in the year under report; those preferred by Government have more than doubled, being 22, against 10 in 1867-68; those preferred by private persons have not varied much, being 39 in the year under report, against 34 in 1867-68.

12. The Board cannot regard with satisfaction this increase in the number of appeals preferred by Government, as it implies either bad decisions on the part of the Judges, or bad judgment on the part of those intrusted with the defence of the Government interests. Of the 71 appeals decided, 37 were for Government and 34 against; but of the appeals instituted by Government, 22 in number, the balance was against Government, 10 having resulted in favour of, and 12 against, the officers representing Government. The results, therefore, would *prima facie* seem to impugn the judgment of those intrusted with the defence of the Government interests, rather than the law of the decisions appealed against.

13. But while the Board are unable to congratulate themselves on this score, they notice with gratification the decrease in the number of applications made against the Government. These have fallen from 49 to 34; and of the latter, 6 were petitions to be allowed to sue *in forma pauperis*, 1 was an application to set aside an order fining for contempt of Court, and 1 was an application for the redemption of a mortgage where the Government stood in the place of the rebel mortgagee; only in 25 cases, 4 of which referred to wards' estates, were applications to recover costs preferred against the Government officials. This affords a satisfactory contrast to the state of things noticed last year, when, in the Rohilkund Division, above 37 applications of this nature were lodged.

The Board, however, hope that in future years the number of applications for costs will still further decrease, and they have full confidence that District Officers will endeavour to bring this about.

14. The accompanying Statement shows the results of the litigation during the year, so far as the decisions have been for or against Government.

C.

Statement showing the Percentage of Decisions for and against Government, on the total Cases decided during the past five years.

All Divisions.	1868-69.		1867-68.		1866-67		1865-66		1864-65.	
	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government.	Percentage of Decisions in favour of Government	Percentage of Decisions against Government	Percentage of Decisions in favour of Government.	Percentage of Decisions against Government
Original Suits, ...	79	21	70	30	74	26	58	42	59	41
Appeals, Regular, ...	44	56	59	41	41	59	76	24	80	20
Appeals, Special, ...	86	14	60	40	64	36	100	.	86	14
Miscellaneous Applications, ...	56	44	55	45	87	13	85	15	80	20
Total, ...	65	35	61	39	65	35	76	24	65	35
Government Plaintiff Suits.										
Original Suits, ...	84	16	84	16	94	6	78	22	*56	44
Appeals, Regular, ...	35	65	33	67	6	94	*46	*54	90	10
Appeals, Special, ...	80	20	...	100	...	100	100	...	100	...
Miscellaneous Applications, ...	93	7	94	6	92	8	90	10	75	25
Total, ...	77	23	77	23	51	49	*79	*21	*66	*34
Government Defendant Suits.										
Original Suits, ...	77	23	67	33	71	29	77	23	56	44
Appeals, Regular, ...	48	52	66	34	74	26	67	33	82	18
Appeals, Special, ...	89	11	100	...	82	18	..	100	100	
Miscellaneous Applications, ...	18	82	3	97	60	40	77	23	86	14
Total, ...	58	42	56	44	72	28	73	27	64	36

* These do not agree with the figures in the printed Reports of 1865-66 and 1864-65, as in estimating the average, compromised suits were taken into account.

15. In original suits the results still continue satisfactory, in fact they are better than has hitherto been the case; the Government having been successful in 8 cases out of 10. But in regular appeals, litigation has been more adverse to Government than in the preceding year; while in special appeals, again, it has been more favourable.

Taking appeals of both kinds together, Government has been successful in 52 per cent., and has lost its case in 48 per cent., of the appeals preferred. Of the cases brought into Court, 13 were compromised or withdrawn, 8 in favour of Government and 5 against; of these last 5, 2 were cases in which the Court of Wards was concerned, and 2 were applications for costs in which the sum claimed was paid into Court.

16. Looking at the classification of suits according to nature of claim, we find the following results in the cases in which Government has been a party:—

Putting aside applications for costs, 65 in number, the most numerous class of suits has been that connected with crown-lands and escheats. Suits of this nature have numbered 64, of which 24 were brought by Government; 52 were decided, 37 in favour of, and 15 against Government.

Forty-five cases were connected with the events of 1857-58, and subsequent confiscations (this class of cases is gradually diminishing); 13 of these were instituted by Government; 42 were decided, 28 in favour of, and 14 against Government.

There were 39 cases of contract, 20 brought by Government; 36 were decided, 22 for and 14 against Government. Of the cases instituted by Government, 19 were decided, and of these 18 were in favour of Government.

Twenty-five cases were connected with the Court of Wards.

There were 21 suits to set aside the orders of the Administrative, Settlement, and Magisterial Officers, against 46 cases in the preceding year, a very satisfactory decrease; of these 16 were decided, 11 for and 5 against Government.

There were 6 Exchequer cases, against 23 in the previous year; of these, 5 were decided, 3 for and 2 against Government.

Of the remaining cases, 8 related to trespass, of which 6 were decided, 5 for and 1 against Government; and 4 were for trover, of which 3 were decided, 2 for and 1 against Government.

There was also 1 action for libel brought against a Government servant, a police officer, acting in the discharge of this duty. This was decided in favour of Government.

17. The subjoined Table shows the litigation in the several divisions:—

D.

Abstract of the number and class of cases under trial in each of the Divisions of the N.-W. P.

	Contract.	Exchequer.	Libel and Damage.	Confiscation.	Wards.	Crown-lands and Escheats.	To set aside Orders.	Trespass.	Trover.	Wages.	Costs.	Total.
Meerut, ...	8	...	...	6	1	12	4	..	1	...	13	45
Rohilkund, ...	14	3	...	22	...	15	1	...	2	..	23	80
Agra, ...	7	1	...	2	1	22	5	3	..	...	9	50
Allahabad, .	6	1	1	2	2	6	...	5	.	...	4	27
Benares, ...	4	1	...	13	21	9	11	.	1	1	16	77
	39	6	1	45	25	64	21	8	4	1	65	279

D.—(Continued.)

Statement showing the Number of Cases under Trial in each of the Divisions during each of the years 1865-66 *to* 1868-69.

Divisions.	1865-66.	1866-67.	1867-68.	1868-69.
Rohilkund, ...	100	115	120	80
Benares, ...	95	89	93	77
Agra, ...	36	37	32	50
Meerut, ...	55	58	48	45
Allahabad, ...	58	49	35	27
Jhansie, ...	...	...	2	...
Kumaon, ...	...	...	...	...
Ajmere, ...	...	...	...	...

Rohilkund still stands highest; but Allahabad has, in the year under report, changed places with Agra, having the smallest amount of litigation of any of these divisions. In this division only 3 suits were instituted by Government. The position of the several divisions remains the same whether the miscellaneous applications are excluded or not, and is shown in the above Statement, which also shows the nature of the litigation in each division. This remains very much the same as heretofore.

In Rohilkund there was the largest number of cases connected with confiscation subsequent to the mutiny; 21 out of 25 cases instituted by and against the Court of Wards belong to the Benares Division, and more than half the suits to set aside orders occurred in that division. The non-regulation divisions are still conspicuous by their absence from these returns; and the fact which has previously elicited the Board's comments, still remains, that the actions and orders of the non-regulation officers are not made the subject of suits in the Civil Courts over which they preside.

18. The accompanying Table E. shows the costs incurred, awarded, and realized, in the suits decided during the year:—

E.

Statement of Costs in Cases decided during the year.

Divisions.	Incurred.	Awarded.	Recovered.
	Rs. As. P.	Rs. As. P.	Rs. As. P.
Meerut, ...	1,065 8 9	1,070 1 3	134 13 7
Rohilkund, ...	7,423 7 8	2,748 14 10	292 11 6
Agra, ...	4,310 4 8	4,233 0 8	68 0 0
Allahabad, ...	1,218 14 11	1,505 13 11	54 4 11
Benares, ...	3,350 6 6	1,414 3 6	776 13 0
Total, ...	17,368 10 6	10,972 2 2	1,326 11 0

The division which shows best is that of Meerut, while Rohilkund is specially remarkable for the very small amount of costs awarded, as compared with the large amount incurred in litigation. As the Commissioner has neglected to conform to the instructions conveyed in Board's Circular Order No. 18 dated 19th August, 1868, it is not evident from the statement he has submitted whether only those costs incurred in the decided cases have been shown, or the costs of all the cases instituted. Without explanation on this point, it must be held that the Commissioner has shown only the costs incurred in the cases decided; and, if this is so, the litigation in the Rohilkund Division has been costly to a discreditable degree.

19. In every instance the proportion of costs recovered to amount awarded is unsatisfactory, and the attention of Divisional and District Officers will be drawn to this with a view to the more rapid realization of the sums awarded.

20. It remains only to notice the particular cases of interest which have been under trial during the year.

Government, Appellant, *versus* Mussumat Khan Zadee Begum

This case is still before the Privy Council.

21. This suit, referred to in paragraph 29 of last year's Report as having been appealed to the High Court, has been decided in appeal in favour of the Government, and the decision is given below :—

Collector of Moradabad *versus* Dooga.

Present:
Mr Justice Turner,
and
Mr. Justice Spankie.

28th *August*, 1868.

" Collector of Moradabad on the part of Government (Plaintiff), Appellant,

" *versus*

" Mussumat Doorga (Defendant), Respondent.

" This suit was brought on the 7th June, 1866, in the Court of the Zillah Judge " of Moradabad, by the Collector of Moradabad claiming on behalf of Government, to " obtain possession of certain movable and immovable property, on the averment that " it formed part of the property of Kishen Lall deceased, whose last surviving heir is " alleged to have been his mother, Mussumat Myna (hereinafter described as Mussumat " Myna L), who died on the 19th June, 1865. The title on which the claim is based is, " as it is alleged, that conferred by the Shastre, which prescribes that on failure of the " heirs of a deceased person, his estate shall pass to the Sovereign. The cancelment of a " certificate granted to the defendant, Mussumat Doorga, under Act XIV. of 1841, is " also claimed by the plaint.

" The claim is resisted by the defendant Mussumat Doorga on several grounds, which " it will be more convenient to enumerate in the order in which they should properly " be disposed of, than in the order in which they are set out in the written statements " filed by this defendant.

" It is firstly contended that the Government, being a Christian Government, is " not entitled to prefer a claim under the Hindoo Shastres; that, by the conditions which " the Shastre imposes on the right of the Sovereign, it is evident that the Sovereign can- " not claim a beneficial interest in the property; and that, under the Shastre, so many " classes of persons are enumerated as heirs in priority to the Sovereign, that it is " practically impossible that the Sovereign should succeed.

" It is contended, secondly, that the claim is barred by limitation.

" It is contended, thirdly, that Kishen Lall was illegitimate.

" Fourthly, it is contended that there are other heirs whose title is prior to that " of the Government.

" Fifthly, it is contended that the Government is estopped from preferring this " claim by the acts and admissions of its servants, in that they have from time to time " recognized this defendant, and those under whom she claims, as proprietors, making " settlements with them, and recording their names in the proprietary column in the " Revenue Records, and dealing with them as persons entitled to sell for the purchase " of a piece of land which formed a portion of the estate now in suit.

" Sixthly, it is contended that Government is estopped by the act of Kishen Lall, " who recognized the persons, from whom this defendant claims, as copartners.

" Seventhly, it is contended that by the custom of the family females inherit

"Eighthly, it is contended that there was a partition of the property; that, under "that partition, the persons from whom the defendant Mussumat Doorga claims, became "possessed of their several shares as proprietors; and that the defendant Mussumat "Doorga, as the daughter of Mussumat Bhuntee, is entitled to the share held by Mus-"sumat Bhuntee, and as the sapindah and legatee of Mussumat Myna I, to the share "which she now holds in the property of Mussumat Myna I.; and

"Ninthly, it is contended that the claim to the movable and private property of "Mussumat Myna I. cannot be maintained.

"The defendant Goolzarce Mull resists so much of the claim as affects certain pro-"perty to which he claims to be entitled, under an auction-sale held on the 4th Sep-"tember, 1850, and confirmed on the 29th November following, which sale was made "in execution of a decree obtained by one Radha Kishen against Mussumat Punnoo.

"The defendant Gokinath has been made a defendant under Section 73 of the Code "of Civil Procedure. In the written statement filed by him, he, as the representative "of one Madho Lall, claimed to be admitted to defend in respect of a certain garden, "which, as is alleged by him, was given 20 years ago by Mussumats Myna I. and Bhun-"tee, as an endowment to Madho Lall. He stated that the garden had not been included "in the list of the property sued for, but that the servants of Government had, in the "year in which the suit was brought, entered into possession of the garden, and prevented "him from receiving its fruits.

"The defendant Toolsee Ram was made a party to the suit on the application of "the plaintiff, on the ground that he had purchased an inconsiderable portion of the pro-"perty sued for on the 2nd June, 1866, from Mussumat Doorga. Toolsee Ram, having "been so made a party, filed a written statement, in which he contended that the pro-"perty purchased by him formed part of the estate of Khooshal Rae, to which Doorga "had obtained a right by long-continued possession, and that he purchased it at auction, "in execution of a decree obtained by Jowahir against Mussumat Myna I. and Doorga.

"Such being the allegations of the respective parties, it will be convenient to deal "next with the facts which are admitted, or which in our opinion are to be gathered "from the documentary and other evidence adduced in the Court of First Instance, and "to notice, in their proper chronological sequence, the judicial decisions which have been "referred to in the course of the proceedings, and which have a material bearing on the "questions at issue.

"As regards the history of the family, the earliest ancestor mentioned in the pedi-"grees which have been filed, is one Samadhan. Samadhan had three sons, Khooshal "Rae, Thakoor Dass, and Hooles Rae, and one daughter, Mussumat Lulta. At what "time he died is not shown, but there is little doubt that his death occurred in the life-"time of his sons.

"Khooshal Rae died in 1806, leaving two married wives, Mussumats Myna II. and "Kishoree, and two ladies who are called unmarried wives, Mussumat Myna I. and "Mussumat Bealee; and two sons by Mussumat Myna I., namely Kishen Lall and "Ruttun Lall.

"No evidence has been adduced to show when Mussumat Myna II., one of the "married wives of Khooshal Rae, died. She appears to have been alive in 1837, but "it is not denied that she is not now alive; and, as appears from the arbitration pro-"ceeding hereafter mentioned as having taken place in 1844, it would appear that she "died in the lifetime of Kishen Lall.

"Mussumat Kishoree, the other married wife of Khooshal Rae, died at same time, "after 1830, and before June, 1837.

"Mussumat Myna I., one of the unmarried wives of Khooshal Rae, died on the "19th June, 1855.

"Mussumat Bealee, the other unmarried wife of Khooshal Rae, died in 1844.

"Kishen Lall survived his brother Ruttun Lall, and died in 1844, leaving two "widows, Mussumat Myna III., who died in 1858, and Mussumat Maharanee, who "died in 1847, and having had issue one son, Rampershad.

"Rampershad died in 1841, in his father's lifetime, leaving a widow Mussumat Goolaboo, who died in 1861.

"Ruttun Lall, the brother of Kishen Lall, died in 1830, in the lifetime of his "brother, leaving a widow, Mussumat Bhuntee, who died in 1863, and a daughter, the "defendant Mussumat Doorga.

"Thakoor Dass, son of Samadhan, died without issue in 1829, leaving a widow, "Mussumat Punnoo, who died in 1851.

"Hoolas Rae, son of Samadhan, also died in 1829, a few days after his brother, "Thakoor Dass It does not appear that he left any issue or widow.

"Mussumat Lulta, the daughter of Samadhan, had issue one son Mungul Singh; "the date of her death is not shown.

"Mungul Singh had one son, Gunga Pershad, who is now alive. Mungul Singh "was alive in 1837, and appears to have died before 1864, though there is no evidence "to show precisely at what time he died.

"The immovable property which forms the subject of this suit, is admitted to have "formed a portion of the estate of Khooshal Rae. From the copy of a judgment in a "suit which was determined by the Civil Court of Moradabad, in August, 1837, it "appears that on Khooshal Rae's death, all his nearest heirs were minors, and, conse-"quently, the management of his estate was undertaken by his brother Thakoor Dass.

"In the same proceedings of August, 1837, it is recorded that, disputes having "arisen between Thakoor Dass and Hoolas Rae with reference to the custody of the pro-"perty of Khooshal Rae, recourse was had to the Courts, when Thakoor Dass deposed, on "the 5th February, 1811, that he was guardian and manager on behalf of the widows "and sons of Khooshal Rae, and had no other right in the property; that this statement "being confirmed by Hoolas Rae, the Court on the 8th April, 1815, ordered that Thakoor "Dass should remain in possession as manager, but should not be at liberty to alienate. "It is further recorded, that after the death of Thakoor Dass, which, as has been before "stated, occurred in 1829, the widows and sons of Khooshal Rae applied to the Magis-"trate for possession of the property, and that the Magistrate ordered that the widow "of Thakoor Dass should remain in possession, and referred the applicants to a civil "suit; and that thereupon, the married wives of Khooshal Rae, Mussumats Myna II. "and Kishoree, brought a suit against Mussumat Punnoo, claiming half of the "property, and obtained a decree, which was confirmed by the Suddor Court at "Allahabad, on appeal.

"For the recovery of the other moiety of the property of Khooshal Rae, a suit was "instituted on the 7th June, 1837, by Kishen Lall, who associated with himself, as co-"plaintiffs, his mother, Mussumat Myna I., and Mussumat Bhuntee, his sister-in-law. The "Judge non-suited the plaintiffs, directing that the plaintiff, Kishen Lall, should bring his "suit, including Mussumat Myna II., the married wife of Khooshal Rae. From this it "may be inferred that Mussumat Kishoree had died before this order was passed, "otherwise it would have been ordered that she also, as the other married wife of Khoo-"shal Rae should be made a party to the suit.

"The matters above stated with reference to the property of Khooshal Rae, and the "events relating to it which occurred subsequently to his death, we gather, as we have "before observed, from the copy of a judgment of the Civil Court of Moradabad, dated "the 7th August, 1837. The copy was filed by the defendant Mussumat Doorga, and "its authenticity has not been questioned.

"The suit in which this judgment was pronounced, was instituted by Kishen Lall "on the 6th July, 1837, and in compliance with the direction given when his former "suit was dismissed, he omitted the name of his mother Mussumat Myna I., and asso- "ciated with himself, as co-plaintiffs, Mussumat Myna II., the married wife of Khoo- "shal Rae, and Mussumat Bhuntee. Mussumat Punnoo, the widow of Thakoor Dass, "Mungul Singh, the nephew of Thakoor Dass, and son of Lulta, the daughter of Samadhan, "Goordhun, and Kulloos (probably erroneously written for Goolaboo) were impleaded "as defendants; and the subject of the claim was the residue of the property in Mussumat "Punnoo's possession, which, it was averred, belonged to Khooshal Rae.

"On the 18th July, 1837, Mussumat Punnoo filed an answer, in which she urged, "that if Mussumat Myna I., the mother of Kishen Lall, and Mussumat Bhuntee "had any claim on the inheritance of Khooshal Rae, under the Shastres, they should look "to the moiety of the ancestral property which had been recovered by Mussumat Myna "II., the wife of Khooshal Rae; that no claim could be maintained against the moiety "of the ancestral property of which she was in possession as the widow of Thakoor Dass; "and she took issue on the averment of the plaintiffs that the property in suit was the "acquired property of Khooshal Rae.

"Mungul Singh, Goolaboo, and Goordhun, filed an answer, to the effect that they "had only been impleaded as the relatives of the principal defendant, Mussumat "Punnoo; that they had no other connection with the matter in dispute; and that "Goordhun, who was the servant of Mussumat Punnoo, had been impleaded merely for "the purpose of preventing him from giving evidence.

"On the 24th July, 1837, the plaintiffs filed a replication, and on the 1st of "August, Mussumat Punnoo filed a rejoinder, shortly after Mungal Singh, as the attorney "of Mussumat Punnoo, filed a petition reciting an agreement that the defendants should "admit the claim of the plaintiffs, and the plaintiffs should pay the costs of suit, and stat- "ing that the defendants had no objection to give possession of the property claimed. It "was, therefore, prayed that the petition should be accepted as a confession of judg- "ment.

"After satisfying itself of the authority of Mungul Singh to act for Mussumat "Punnoo, the Court passed a decree in favour of the plaintiffs, at the same time ordering "them to pay costs.

"As has been before stated, Kishen Lall died in 1844, leaving as his heirs his widows, "Mussumat Maharanee and Mussumat Myna III. His mother, Mussumat Myna I., "and Mussumat Goollaboo, the widow of his son Rampershad, also survived him.

"Between those ladies, and Mussumat Bhuntee and Mussumat Punnoo, disputes "arose as to the property which he left, which disputes resulted in a reference to arbi- "tration; the agreement to refer being dated the 7th March, 1844.

"A copy of the award has been filed. It contains a statement of the facts which "the arbitrators considered to be proved in relation to the property in dispute. They "found that Samadhan was the common ancestor, but that the greater portion of the "property had been acquired by Khooshal Rae. They also found (what is not altoge- "ther consistent with the facts recorded in the judgment of August, 1867), that the sons "of Samadhan lived as a joint family, and that after Khooshal Rae's death, his "brobers, Thakoor Dass and Hoolas Rae, obtained possession of it; that Kishen Lall and "Ruttun Lall were illegitimate sons of Khooshal Rae, and being minors at the time of "their father's death, did not interfere; that after the death of Hoolas Rae and Khoo- "shal Rae's wife, Kishen Lall obtained possession of the property; that the wife of "Thakoor Dass obtained possession of her husband's property, and that she subse- "quently put Kishen Lall in possession of that property also.

"Upon these findings of fact, the arbitrators determined that the annual profits of "the whole property left by Kishen Lall should be divided into three parts, two parts

" being taken by the heirs of Kishen Lall, described in this place as Mussumats Myna " I., Myna III., and one part by Mussumat Punnoo; that on the death of Mussumat " Punnoo, the one-third share awarded to her was to revert to the heirs of Samadhan. " All parties were prohibited from alienating the *corpus* of the estate, either by sale or " mortgage, but power was given them to partition it, and also power to adopt. The " share of Mussumat Punnoo was charged with a small monthly payment to Mussumat " Goolaboo, and the shares of Mussumat Maharanee and others, heirs of Kishen Lall, " with the payment of a small monthly allowance to Mussumat Bealee.

" In 1847, it would appear that Mussumat Maharanee died.

" After the award in 1844, Mussumat Punnoo appears to have separately enjoyed " the profits of the one-third of the estate which had been awarded to her. In the " settlement agreement of Mouzah Phullendah, which bears date the 5th July, 1848, " and which was executed by Mussumats Goolaboo, Punnoo, Myna I., Bhuntee, and " Myna III., the ladies Mussumat Bhuntee, Myna I., Myna III., appear to have " recorded themselves as proprietors of their share, and declared Mussumat Goolaboo " and Doorga to be entitled in succession to that share; and Mussumat Punnoo re- " corded herself as proprietor, and named her nephew, Khooshal Chund, as entitled " to succeed to her share.

" From the sale certificate filed by Goolzaree Mull, dated 10th December, 1850, " it appears that a small portion of the property was, on the 4th September, 1850, " sold in execution of a decree obtained by Radha Kishen against Mussumat Punnoo " and Khooshal Chund.

" In August, 1851, a Kalikhana grant of certain villages which formed portion of " the estate, was made by Government to Mussumats Punnoo, Myna I., Bhuntee, and " Myna III., and in the same year, Mussumats Punnoo, Bhuntee, Myna I., and Myna " III., obtained a grant of Muniarpoor in farm.

" In the latter part of 1851, Mussumat Punnoo died, and the share of which she " obtained the profits under the award, again merged on the general estate.

" A certificate under Act XIX. of 1841, was granted in respect of this share to " Mussumat Myna I., Mussumat Myna III., and Mussumat Bhuntee, as appears from " the printed decision of the Zillah Court of Moradabad, in the case Thundee Ram and " others *versus* Mussumat Myna and others (Zillah Decisions, Moradabad, 1855, page " 64). This decision was not, apparently, referred to in the Lower Court, but it " has been cited in this Court, and as the records of the Court are probably des- " troyed, we have, with the consent of the pleaders of the parties, treated the " authorized report as evidence. The claim of the abovementioned ladies to this " certificate had been opposed by Khooshal Chund and Moona Lall, but their ob- " jection had been overruled, whereupon a suit was instituted in the Court of the Prin- " cipal Sudder Ameen of Moradabad, by Thundee Ram, Runjeet Singh, Bishen Singh, " and Buhalee Ram, who claimed to obtain possession of Mouzah Shahpoor Tignee, a " portion of the estate which had been held by Mussumat Punnoo under the award, on " the averment that it had passed to them by purchase from Khooshal Chund and " Moona Lall, her nephews, the sons of her brother. The suit having been dismissed " by the Principal Sudder Ameen, has appealed to the Zillah Judge, who, in the decision " to which we have referred, confirmed the decision of the Lower Court, on the ground " that the sale was collusive, and that the alleged vendor could take no interest in the " property claimed, inasmuch as it was a portion of the estate of Kishen Lall, and that " Mussumat Punnoo took only a life interest under the award.

" In 1856, Khooshal Chund and Moona Lall brought a suit against Mussumats Myna " I., Myna III., and Bhuntee, claiming the one-third of the property which had been " held by Mussumat Punnoo. They alleged that Mussumat Punnoo had, with the con- " sent of the arbitrators who passed the award in 1844, adopted Khooshal Chund, and

"that she had transferred the property awarded to her to them, Khooshal Chund and "Moona Lall, jointly, by a deed of gift bearing date the 20th day of February, 1850, "which they alleged was attested by two of the said arbitrators, and by the then defen-"dants. Upon this deed they based their suit. The Principal Sudder Ameen dismissed "the claim, on the ground that the award specially prohibited Mussumat Punnoo from "alienating, and rested the reversionary right in her share in the surviving relatives of "Samadhan. He moreover held the alienation to be invalid under the Hindoo law, "which prohibits alienation by a widow. The Sudder Court on appeal, on the 31st "January, 1857, confirmed the Principal Sudder Ameen's judgment, holding that under "the terms of the award, alienation could not be made by Mussumat Punnoo, and that "the then defendants were the relatives of Samadhan referred to in the award; it fur-"ther held, that the attestation of the alleged deed by the two of the arbitrators many "years after the date of the award, could not give effect to the deed; and as to the coun-"tersignature of the deed by the then defendants, it found that the deed purported to "be signed by Koondun Lall as their mohurrir, but that no proof was adduced to show "that any authority had been delegated to Khoondun Lall to execute the deed. Refer-"ring to the litigation that had taken place, the Sudder Court considered that the whole "transaction was fraudulent (Decision Sudder Dewanny Adawlut, North-Western Pro-"vinces, 1857, page 41).

"In this suit it is to be noticed that Lalla Gunga Pershad intervened.

"By a registered instrument bearing date the 26th January, 1859, Mussumats "Myna I., Bhuntee, and Myna III., after reciting that the movable and immovable "property left by Kishen Lall had come to them in equal shares, and that they were "jointly in possession and proprietors of their own right, respectively entered into an "agreement as to the expenditure of the profits, for certain purposes specified in the "instrument, and assigned eight houses to their mookhtear, with power of alienation, "and one house to Gunga Pershad, with the like power.

"By another registered instrument, also bearing date the 26th January, 1859, "Mussumat Bhuntee, after reciting that she was proprietor of one-third of the property, "she declared that after her death Mussumat Doorga should receive her property.

"Mussumat Myna III. appears to have died in the year 1859.

"By an instrument dated the 18th August, 1859, Mussumat Myna I., after "reciting that, as the mother of Kishen Lall, she was proprietor of one-third, and that "Mussumat Bhuntee was proprietor of one-third, and Mussumat Goolaboo, as heir of "Mussumat Myna III., deceased, was proprietor of the remaining one-third, and that "they were all in possession; and after reciting the agreement entered into in the life-"time of Mussumat Myna III, the wife of Kishen Lall, she directed that after her "death her property should be divided in three equal shares between Mussumats Bhun-"tee, Doorga, and Goolaboo.

"This instrument, also, was registered.

"The defendant Mussumat Doorga has filed a proceeding of the 31st January, "1860, by which Mussumat Bhuntee's name was substituted in lieu of Mussumat "Myna's, as lumberdar of mouzah Jafarpoor, a portion of the property in dispute. "She has also filed several documents in the nature of farm grants and kaboolyut, pur-"porting to be made in 1859, 1860, 1861, and 1862, which were executed in favour of "Mussumats Myna I. and Bhuntee, and in some instances of Mussumats Myna I., "Bhuntee, and Goolaboo, in respect of other portions of the property in dispute, "and these documents are doubtless genuine.

"In 1861, Mussumat Goolaboo died.

"On the 27th May, 1862, the Collector of Moradabad, on behalf of Government, "purchased from Mussumat Myna I., who is in the sale deed described as the wife of

"Khooshal Rae, a parcel of land, portion of the estate of Khooshal Rae, and in this "transaction it is alleged the ladies were treated as proprietors.

"On the 5th March, 1863, Mussumat Bhuntee died, and the defendant Mussumat "Doorga was recorded as her heir in respect of her share in the village of Shahpoor, "a portion of the property in dispute, in a proceeding of the Revenue Officers, dated "the 29th April, 1863.

"In respect of another portion of the property, a kaboolyut was executed on the "19th May, 1863, in favour of Mussumat Myna I., described as the mother of Kishen "Lall, and the defendant Mussumat Doorga; and kaboolyuts were also executed on "the 6th April, 1864, in respect of a house, and on the 17th September, 1864, in "respect of a shop, in favour of Mussumats Myna I. and Doorga.

"In 1863, Gunga Pershad, the grandson of Mussumat Lulta, daughter of Sama-"dhan, sued Mussumat Myna I. and Doorga, claiming the one-third of the property "in dispute held by Mussumat Punnoo by right of inheritance under the terms of the "arbitration award above recited.

"The defendant Mussumat Doorga has filed the decision of the Principal Sudder "Ameen of Moradabad, in whose Court this suit was instituted, and by whom it was "dismissed on the ground that under the terms of the arbitration award, by which the "then plaintiff has expressed his willingness to be bound, the then defendants were "clearly the heirs of Kishen Lall referred to in the arbitration award, and as such the "nearest of kin to Samadhan. In this decision, the Principal Sudder Ameen recorded "that Mungul Sein, the father of the plaintiff, died after the death of Mussumat Punnoo.

"The decision was appealed to the Sudder Dewanny Adawlut, North-Western Pro-"vinces, and the judgment of that Court, dismissing the appeal, is reported in the 2nd "volume of the authorized Report of the Sudder Court, North-Western Provinces, 1864, "page 125.

"From the proceedings of the Collector, bearing date 3rd December, 1863, and the "14th January, 1864, it appears that on the application of Mussumat Doorga, with the "consent of Mussumat Myna I., Mussumat Doorga's name was ordered to be substituted "in the Revenue Records for that of Mussumat Bhuntee, in respect of the property "recorded in the name of Mussumat Bhuntee.

"From another proceeding of the Collector, dated 3rd November, 1864, it also ap-"pears that the Collector refused an application made on behalf of Government for the "removal of Mussumat Doorga's name from the records, on the ground that Mussumat "Doorga was the daughter of Mussumat Bhuntee, who had executed a deed of gift in "her favour, and that the claim of Government in respect of the property left by Mus-"sumat Bhuntee was improper.

"Disputes now seem to have arisen between Mussumat Myna I. and Mussumat "Doorga with reference to the management of the property, and scandalous tales were "brought to the knowledge of Mussumat Myna I. affecting the character of Mussumat "Doorga.

"This is shown by proceedings before the Collector, which have been filed by the "plaintiff, and which bear date respectively the 29th November, 1864, the 15th De-"cember, 1864, the 11th April, 1865, and the 19th April, 1865.

"In these proceedings, Mussumat Myna I. asserted that the property had been ac-"quired by her husband, Khooshal Rae, and no part of it by her son Ruttun Lall. She "alone was entitled to proprietary possession; that Mussumat Bhuntee's name, and "subsequently, Mussumat Doorga's, had been recorded as a matter of kindness; that "they never had possession; and that Mussumat Doorga was a person of vicious life.

"The final order passed by the Collector in respect of these proceedings, was passed "the 19th April, 1865. By it the application was rejected, on the ground that Mus- "sumat Doorga's name had been for a long time recorded, and the applicant was "referred to the Civil Court.

"In 1865, a suit was brought by Himmut Singh against Mussumat Myna I. and "Mussumat Doorga, in the Court of the Moonsiff of Sumbhul, claiming to establish a "sale-deed in respect of a small portion of the property in suit, which he alleged had "been executed in his favour in September, 1862, by Mussumats Myna I. and Bhuntee. "In this suit it is to be noticed that Mussumat Doorga resisted the claim; among other "grounds, on the ground that the alleged vendors had no power of alienation.

"This suit was dismissed by the Moonsiff on the 13th April, 1865, on the ground "that Mussumat Myna I., had no power to alienate the property. Mussumat Myna "I. died on the 19th June, 1865, and on the 1st July, 1865, Mussumat Doorga "applied to the Zillah Judge, under Act XIX. of 1841, for a certificate of heirship, "alleging that she was heir to the deceased, and that she was also entitled under a will. "Mool Chund, Khooshal Chund, and Gunga Pershad also preferred claims. The claims "were resisted on the part of Government, and the cases were heard by the Judge on "the 15th September, 1865, who on his final proceeding, dated the 26th February, 1866, "dismissed the claims of Mool Chund, Khooshal Chund, and Gunga Pershad, but de- "cided that one-half the property which the Government alleged belonged wholly to "Mussumat Myna I., was the property of Mussumat Doorga, inasmuch as Myna I. and "Bhuntee had been the recorded proprietors, and recognized as the heirs of Kishen Lall "and the near relatives of Samadhan, by the decision of the Sudder Dewanny Adawlut, "North-Western Provinces, of the 3rd July, 1864; that after the death of Bhuntee, "Doorga was declared heir to her interest in the property, and obtained possession of it. "The Judge, recording that Mussumat Doorga had admitted her right of succession to "Myna I. to be doubtful, refused her a certificate in respect of the other moiety of the "property; at the same time he ordered the movable property in the possession of Mus- "sumat Myna I. at the time of her death to be sold, and one moiety of the proceeds "to be paid over to Mussumat Doorga.

"In reference to this order, we may observe that it seems hardly to fall within the "provision of Act XIX. of 1841, which applies to the property of the deceased and "to claims preferred to such property.

"If Mussumat Doorga was in possession of one moiety of the property, then she "required no certificate in respect of that moiety, and if possession had been wrongly "taken by the Collector, the Judge had no power, under Act XIX. of 1841, to order "possession of that moiety to be given to Mussumat Doorga. The order as to the "sale and division of the movable property was also beyond the Judge's competency, "unless he considered that Mussumat Doorga was by right of inheritance entitled to a "moiety of the movable property left by Mussumat Myna I.

"But be this as it may, and it is perhaps susceptible of explanation if we had "possessed fuller information of the acts of the Collector after the death of Mussumat "Myna I., the order so passed by the Judge has led to the institution of this suit, in "which Government, being in possession of one moiety of the property, claims to "obtain the other moiety of the property, both movable and immovable, which the "Judge considered to belong to Mussumat Doorga.

"We have above set out the facts which in our opinion are to be collected from "the evidence and admissions of the parties.

"The Court of First Instance dismissed the suit on the following grounds: that the "Government as a Christian Government cannot acquire a title by escheat, nor can it "be nearest heir under the Shastre on which the claim is based while there are learned

" Brahmins in existence who are entitled in priority; that the right of action accrued on " the death of the wife of Kishen Lall; that the suit was barred by the 12 years' limita- " tion; and that, by making the Kalikhana grant to Mussumat Bhuntee in 1851, by " dealing with Mussumat Bhuntee in 1862 as pearson entitled to proprietary rights, " by ackowledging her proprietary possession in 1863, and by recording the defendant " Mussumat Doorga as heir to Mussumat Bhuntee, and giving her possession in 1864, " the Government is estopped from preferring a claim against her to the property " in suit; and that 'the possession of Mussumat Bhuntee was legal, and her proprietary " 'possession as one of the successors and heirs of Kishen Lall had been admitted by " 'the highest Court in the North-Western Provinces.'

" It now remains for us to consider whether the judgment of the Court of First " Instance is maintainable, in reference to the facts above recorded, and to the objections " taken to the judgment by the appellant in his appeal to this Court; and, inasmuch as " we are constrained to differ from the Judge in regard to the grounds on which he has " held the plaintiff to be precluded from maintaining this suit, and it therefore becomes " necessary for us to dispose of the other pleas raised by the defendants, upon which the " Judge has expressed no opinion, we deem it convenient to dispose of the objections " taken in this appeal as far as is practicable in conjunction with the original pleas, " and generally in the order in which those pleas are recorded in the commencement of " this judgment; and in the first place, we propose to deal with the pleas, set up by the " defendant Mussumat Doorga.

" That the Government, although a Christian Government, is entitled to prefer a " claim to the property of a Hindoo subject of Her Majesty who may die without lineal " or collateral heirs, was determined by the Privy Council, in the Collector of Musulipa- " tam *versus* Cavaly Bencata Narramapah (8 M. I. A. 500), in which case it was held " that the title of Government by escheat, even to the property of a Brahmin, ought to " prevail against any claimant who cannot show a better title. In that case, as in the " present, it was contended that so long as there remained a Brahmin in existence, no " title by escheat could accrue to the Crown, but their Lordships expressly overruled the " objection. Whether the interest which the Government takes in property which has " so escheated to it is a purely beneficial interest or not, whether, in fact, the Govern- " ment may deal with such property at its will, or whether it is bound to apply such " property for certain specific purposes, it is in this suit, as it was ruled to be in the case " above cited, unnecessary to determine. We have only to consider whether the Govern- " ment, as against the defendants, is entitled to the possession of the property; and on the " high authority of the case above cited, we hold that, neither on the ground that the " Government is a Christian Government, nor on the ground that Brahmins are in exis- " tence whose title under the Shastres would precede that of the Crown, are the defen- " dants entitled to resist the plaintiff's claim.

" We next deal with the plea of limitation, and in considering this plea two questions " are suggested—the one as to the rule of limitation to be applied to suits of the nature " of the present suit, the other as to the date from which limitation began to run. As to " the first question, we are of opinion that the claim put forward on the part of Govern- " ment is in the nature of a claim to public property or to a public right. The property " which the Government acquires by escheat, it holds as trustee for the public, and in " our opinion it is immaterial whether or not the Government holds the property so " acquired as trustee for a particular class of the public, or for particular public purposes. " That this interpretation of the term public is not unknown to the law of British India " is shown by the definition of the word 'public' in Section 12 of the Indian Penal " Code, where it is defined as including 'any class of the public or any community.' " Assuming, then, that we are right in viewing the present suit as a claim for the re- " covery of public property or a public right, it is, by the 17th Section of Act XIV. of " 1859, excluded from the operation of that Act, and is governed by the provisions of

" Regulation II. of 1805, Section 2, Clause 2, which enact that in the absence of any " special rule or provision otherwise limiting such a suit, it is to be heard determined in " the Court of Civil Justice, if regularly preferred within the period of sixty years from " the cause of action.

" The plaintiff who has brought this suit, claiming the property as the property " of Kishen Lall, alleges that the right of action accrued on the death of Mussumat " Myna I., Kishen Lall's mother. The defendant Mussumat Doorga, by pleading " that Kishen Lall was illegitimate, appears to contend that, being illegitimate, he could " take no estate, and therefore could confer no right of inheritance on his mother, or by " escheat on the plaintiff, and that consequently a cause of action could not have accrued " to the plaintiff in respect of his estate. But in disproving the plaintiff's claim by es- " cheat to the property in suit as the property of Kishen Lall, it appears to us that the " defendant Mussumat Doorga establishes that the plaintiff has a superior title to that " which is set out in the plaint, and that a cause of action which is sufficient to support the " claim as against her, arose within the period of limitation. The property in suit is " in our opinion sufficiently shown to have formed a portion of the estate of Khooshal " Rae, held by him as a separate acquisition. The arbitrators, in 1844, considered it proved " that Khooshal Rae lived with his brothers in commensality, but from the copy of the " decree of the Judge of Moradabad, dated August, 1837, which has been filed by the " defendant Mussumat Doorga, it is shown that his brothers after his decease preferred " no claim to his property on their own behalf, but the elder of them, Thakoor Dass, held " it as guardian of the heirs of Khooshal Rae. Khooshal Rae left two widows, two con- " cubines, and two illegitimate sons the offspring of one of his concubines. Under these " circumstances, if the property had formed a portion of the family property, if it had " been acquired out of the joint funds, it is reasonable to suppose that his brothers who " disputed the custody of it would have preferred a proprietary claim to it against the " widows of the deceased, who were his only lawful heirs, and who would not have " been entitled to possession of it unless the property was the separate acquisition of " their husband.

" There is nothing before us to show to what caste Khooshal Rae belonged, but it is " stated by the plaintiff's pleaders that he belonged to the Bukkal or Bunneeah caste, " one of the three regenerate classes. If this be so, under the Hindoo law as received " in those Provinces, his illegitimate sons were not entitled to inherit (Pershad Singh " *versus* Ram Bushesri, 3, Sudder Dewanny Adawlut, North-Western Provinces, 132). " It is true that though it is now well-established that the law is otherwise, yet in some " ancient authorities there is warrant for holding that even among the three regenerate " classes an illegitimate son has rights of inheritance, subsidiary to those of the *aurosa*, " or son by a lawful wife. These authorities are collected and commented on in Pundaiya " Telaver *versus* Pale Telaver (1, Madras H. C. R., 482), and in a very early case heard in " the Sudder Court of the Lower Provinces, Mohun Singh *versus* Chummun Rae (1, Sud- " der Dewanny Adawlut Register 28), it was held that a son not born in wedlock might " under the Hindoo law inherit, if it was proved to be the custom of the Province. But " from the fact that the suit of Kishen Lall, when in 1837 he sued without joning with " him his father's widow, Mussumat Myna II., was rejected, it would seem that at least " at that time it was understood that he had no right of inheritance to support a claim to " possession of the estate of his ancestor. We therefore think it may reasonably be " inferred that the brothers of Khooshal Rae did not assert a right to the property left " by him, not because he left illegitimate sons, but because it had been separately acquired " by him, and because he had left two lawful wives, Mussumats Myna II. and Kishoree, " who were entitled to take possession of his estate.

" It is, it must be admitted, difficult to explain satisfactorily the proceedings which " occurred in and subsequently to 1837, nor can we suggest any explanation of the fact " that Mussumats Myna II. and Kishoree, the widows of Khooshal Rae, when they

"brought their first suit, claimed only one moiety of the property of Khooshal Rae. It "may be that at that time they were disposed to concede the right of Mussumat Punnoo, "as the widow of Thakoor Dass, to the possession of the other half. However this "may be, it is certain that Kishen Lall, when he sued with Mussumat Myna I., re-"covered from Mussumat Punnoo possession of the other half, having previously been "nonsuited when he sued without her.

"Assuming, then, the property in suit to have been the separate acquisition of "Khooshal Rae, and that on his death it devolved on his lawful wives; of these we "have before given our reason for believing Mussumat Myna II. to have been the "survivor, in that the Judge objected that she should be joined as plaintiff with Kishen "Lall, and did not direct that Mussumat Kishoree should be so joined.

"But whether or not Mussumat Myna II. survived Mussumat Kishoree, it is "not denied that both those ladies have long since died. On the death of the survivor "of them, which has occured since 1837, and therefore within 60 years of the institution "of this suit, the estate of Khooshal Rae became apparently a vacant inheritance. His "brothers, Thakoor Dass and Hoolas Rae, had died without issue. Her sister's son, "Mungul Singh, was not entitled to inherit under the law prevailing in these Provinces, "Thakoorain Sahibah *versus* Mohun Lall (Sutherland's P. C. C., 681). His son, "Kishen Lall was illegitimate; Mussumats Myna I. and Bealee were unwedded wives, "and therefore could not claim the inheritance. Under these circumstances the estate, in "absence of heirs, escheated to the Government on the death of the surviving wife of "Khooshal Rae. Although, then, the contention of the defendant Mussumat Doorga "may be correct, and Kishen Lall and Mussumat Myna I. could take no interest in the "estate of Khooshal Rae, the position of Mussumat Doorga is not thereby improved, for "it is evident that as she cannot show a title to it paramount to that of the plaintiff, "and the right of possession accrued to the plaintiff within 60 years before suit, the "plaintiff's title must prevail unless anything has occurred to bar it.

"But the plaintiff alleges that Kishen Lall, whether under a good title or no title, "obtained possession of the property in suit; it may therefore be desirable to consider "how far such a possession could affect the plaintiff's right to the property of Khooshal "Rae, which accrued on the death of the survivor of the widows of Khooshal Rae, and "what would be the position of the plaintiff, assuming that right not to have accrued, as "we hold it did.

"The possession of Kishen Lall, and of those who claimed as his heirs, could not in "our opinion destroy the plaintiff's title to the estate of Khooshal Rae which accrued on "the death of the survivor of his widows, for the possession of Kishen Lall, cannot have "commenced earlier than the date of the decree which he obtained in 1837, and there-"fore at a time which is considerably within 60 years before the institution of this suit. "On the other hand, if we are wrong in holding that the plaintiff became entitled by "escheat to the estate of Khooshal Rae, on the death of the survivor of his widows, there "is in our opinion evidence to show that Kishen Lall acquired possession as proprietor "in 1837, and that he enjoyed such possession up to the time of his death in 1844. "Then, who was the heir of Kishen Lall? His son had predeceased him, leaving a wi-"dow, Mussumat Goolaboo. His brother had predeceased him, leaving also a widow, "Mussumat Bhuntee, and a daughter, the defendant Mussumat Doorga. These ladies "all survived Kishen Lall, as did also his mother, Mussumat Myna I., and his wives, "Mussumat Myna III. and Mussumat Maharanee. Of these ladies, his widows were his "heirs, and of these the survivor was Mussumat Myna III., who died in 1858, in the "lifetime of Mussumat Myna I., his mother. If the mother of an illegitimate child is "entitled to succeed to his property, then, on the death of Mussumat Myna III, Mussumat "Myna I. became entitled to the property of Kishen Lall. We can find no authority in "the text-books which we have consulted on this point, but, having regard to the circum-

"stance that illegitimate children are not so rigidly excluded from the family by the "Hindoo law as by the English law, we are disposed to think that the claim of the "mother of an illegitimate Hindoo to succeed to his property would be allowed in the "absence of nearer heirs. Mussumat Myna I., the mother of Kishen Lall, died in 1865, "and at that time there remained no heir of Kishen Lall. There accrued, then, to the "plaintiff, on the death of Mussumat Myna I., a title to the property of Kishen Lall, "by escheat in 1865, assuming Mussumat Myna I. to have been entitled to succeed as "her son's heir; but if she was not so entitled, then the plaintiff's title to the property "of Kishen Lall accrued by escheat on the death of Mussumat Myna III., in 1858.

"In either case, therefore, whether the property in suit be regarded as a part of the "estate of Khooshal Rae, or as the property of Kishen Lall, it appears to have escheated "to the plaintiff. If the former view be correct, it escheated on the death of Mussu-"mat Myna II., at some period after 1837; if the latter view be correct, it escheated "either in 1858 or in 1865. From whichever period limitation be computed, the "plaintiff's suit is within time, if we are right in holding that the 60 years' rule applies.

"Nor, if it be proved that the title of the plaintiff to the property in suit as the "property of Kishen Lall is inferior to the plaintiff's title to it as the property of Khoo-"shal Rae, would it be in our opinion any answer to this suit as against all claims ex-"cept that of the Government. The possession of Kishen Lall was certainly adverse, "and therefore a bar to such claims as accrued by limitation, and we conceive that "the plaintiff was at liberty to treat the property in suit as the property of Kishen "and to assert a claim to it by escheat on the failure of his heirs.

"The plea that Kishen Lall was illegitimate is answered by the observations we "have already made. If he took no possession of the property in 1837, the claim of "the plaintiff may be supported by the escheat which occurred on the failure of heirs "of Khooshal Rae; if he did, as we hold he did, acquire possession in 1837, the time "Lall, for questioning his right to possession has long since lapsed.

"Then, as to the plea that there are other heirs whose title is superior to that of "the Government. If by this plea reference is made to Brahmins, it is disposed of by "the Privy Council decision which we have above cited; if it refers to heirs who are "related by blood, it has not been shown that any such heirs exist, either to the estate "of Khooshal Rae, or to the estate of Kishen Lall.

"We pass over for the present the plea that Government is debarred from prose-"cuting its claim by the acts of its servants, and dispose first of the other pleas; and, "in reference to the plea which we have numbered the sixth plea, we find no evidence in "support of it. Kishen Lall sued in conjunction with Mussumat Myna II., his father's "widow, and Mussumat Bhuntee, his brother's widow. The defendant alleges, that she "claims under her mother Mussumat Bhuntee. It is not shown that Kishen Lall ad-"mitted the right of Mussumat Bhuntee to the possession of any share in the pro-"perty, or that after he had recovered the property she during his life enjoyed any "share in it. It is a sufficient explanation of her joinder with him as co-plaintiff, "that he admitted she was entitled to maintenance out of the estate. The award "of the arbitrators in 1844, expressly declares that Kishen Lall took possession "of the property, and gave to Mussumat Myna I., Mussumat Myna III, and Mus-"sumat Bhuntee, the profits of two-thirds of his property, as the representatives of the "whole body of Kishen Lall's heirs, treating as heirs all persons who were entitled to "maintenance. We therefore hold that the allegations of fact upon which this plea "is based are not proved.

"As to the plea which we have numbered the seventh plea, we also hold there is "no proof of any such family custom as is alleged. The mere fact that under the "award of the arbitrators some of the ladies of the family apparently took interest to

" which they were not legally entitled, is not enough to warrant us in finding the exis-
" istence of such a custom as is alleged, even if a custom confined to one family be a
" custom which we ought to recognize, when it is in conflict with the ordinary law of
" inheritence.

" In reference to the eighth plea that there was a partition of the property, and that
" the persons under whom the defendant Mussumat Doorga claims became possessed of
" their several shares as proprietors, there is no evidence of any such partition prior to
" the death of Kishen Lall; and, if we are correct in applying the 60 years' rule of
" limitation, it is unnecessary for us to determine the effect of the dealings with the
" property subsequently to his death by the persons claiming to be interested in it, for
" he left only female heirs, who were entitled to no larger interest in the property
" than that ordinarily enjoyed by Hindoo ladies.

" At the same time it may be desirable, in the event of this case being carried to
" a higher Court, that we should record our finding as to the manner in which the pro-
" perty was dealt with subsequently to the death of Kishen Lall.

" In 1844, the arbitrators awarded a life-interest in one-third of the profits of the
" property to Mussumat Punnoo, the widow of Thakoor Dass, and the profits of the
" remaining two-thirds to the widow and mother of Kishen Lall, and the widow of
" Ruttun Lall, the mother of the defendant Mussumat Doorga. All the ladies were
" expressly forbidden to alienate. The award in favour of Mussumat Punnoo is
" explained by the opinion which the arbitrators expressed as to the interest which
" her husband took in the property, and which they believed she had handed over to
" Kishen Lall. We have already stated our reasons for holding it proved that her
" husband took no interest in this property, nor is their any evidence of any transfer
" by her other than that made in consequence of the decree of 1837, which was the
" result of a compromise, whereby Kishen Lall became possessed of the property
" which Mussumat Punnoo had claimed to hold as her husband's. The change of
" possession effected by the decree may have come to the knowledge of the arbitrators,
" who, not having the decree before them (and no mention of it is contained in the
" award), may have mistaken its cause.

" Subsequently to the award, Mussumat Punnoo entered into possession of a
" one-third share, and Mussumats Myna I., Myna III., and Bhuntee, into possession
" of the remaining two-thirds of the property of Kishen Lall.

" In our view, Mussumat Myna III. and Mussumat Maharanee, the widows
" of Kishen Lall, were the only persons entitled in strict law to have been recorded
" as heirs of Kishen Lall; Mussumat Myna I., his mother, Mussumat Goolaboo, his
" daughter-in-law, Mussumat Bhuntee, his sister-in-law, and possibly also Mussumat
" Punnoo, the wife of Thakoor Dass, and Mussumat Beelee, the concubine of Khooshal
" Rae, being entitled to maintenance.

" But be this as it may, Mussumat Punnoo acquired, as we have observed, pos-
" session of one-third, which after her death in 1851 reverted to Mussumats Myna I.,
" Myna III., and Bhuntee, who were supposed to be heirs of Kishen Lall, and who,
" as is shown by the deed of 26th January, 1859, admitted that they acquired pos-
" session of his property in that character.

" Mussumat Myna I., the mother of Kishen, Mussumat Myna III., his wife,
" and Mussumat Bhuntee, were, after the award in 1844, recorded as in possession
" of two-thirds of the property of Kishen Lall, and, after the death of Mussumat
" Punnoo, as in possession of the whole of it. In January, 1859, these ladies declared
" themselves as in possession of the whole of the movable property of Kishen Lall,
" in equal shares, and as proprietors of their own rights respectively.

"It is obvious that they had no power whatever to confer such rights on one "another. Mussumat Myna III. was entitled to the possession of the estate, Mus-"sumat Myna I., the mother of Kishen Lall, was possibly a reversioner, and entitled "to maintenance, and Mussumat Bhuntee was also possibly entitled to maintenance, "and it is difficult to understand how these ladies could by agreement between them-"selves injure the title of a reversioner.

"In the same month and year, Mussumat Bhuntee executed a deed in the "nature of a will, bequeathing the moiety in the property of which she claimed to be "the proprietor to the defendant Mussumat Doorgah, and in August of the same "year, Mussumat Myna I., the mother of Kishen Lall, executed a similar instrument, "wherein, after reciting that Mussumat Myna III. had died, and that Mussumat "Goolaboo was proprietor of her one-third as heir, she bequeathed, divided, her share "to Mussumats Bhuntee, Doorga, and Goolaboo, in equal shares.

"Mussumat Goolaboo died in the year 1861, and Mussumat Bhuntee in 1863, "and there remained only Mussumat Doorga, who had been recorded as heir to her "mother in respect of some portions if not the whole of the property, and Mussumat "Myna I., the mother of Kishen Lall, who died in 1865.

"As to the immovable property claimed in this suit, assuming that the 12 years' "rule, and not as we think the 60 years' rule, is applicable, it is clear that the plaintiff "has a right to dispute the alienations made by Mussumat Myna I. and Myna III., "within 12 years before suit, for that those ladies had no larger power of alienations "than that ordinarily possessed by Hindoo ladies we think cannot be disputed, and "this incompetency to alienate was well known to Mussumat Doorga, who pleaded "it successfully in the Court of the Moonsiff of Sumbhul in 1865. Even then, under "the 12 years' limitation, the claim of the plaintiff, as to two-thirds of the property, "cannot be resisted; as to the one-third of the immovable property held by "Mussumat Bhuntee, there may be some doubt. In strictness of law, she, as the "widow of an illegitimate brother of the deceased, who was also himself illegitimate, "could at the outside have been entitled to no more than maintenance, yet she "appears, after the death of Kishen Lall, to have joined with his widow, Mus-"sumat Myna, and his mother Myna, and put in a claim to his property. The "award of the arbitrators is only to be explained on one supposition; they regarded "the property left by Kishen Lall as belonging partly to Thakoor Dass and partly "to Kishen Lall, and in awarding the two-thirds which they held to represent "Kishen Lall's estate to Mussumat Myna III., the widow, and Mussumat Myna I., "the mother of Kishen Lall, and to Mussumat Bhuntee, the wife of Ruttun "Lall, it would seem that they intended that the property should be handed "over to those three ladies as trustees for the heirs, which term they would "appear to have applied to persons who could only claim maintenance. Mussumat "Maharance, as one of the widows of Kishen Lall, had as good a right to pos-"session as Mussumat Myna III., the other widow, and she was recognized as an "heir by the arbitrators when they arranged the charges which should be borne by "each of the shares into which they divided the estate. Had they been directing an "assignment to the persons who could strictly be termed heirs, they would not have "omitted Mussumat Maharance. Then, again, they clearly did not give anything to "Mussumat Bhuntee as heir of her husband, but as one of the heirs of Kishen "Lall, nor did they, apparently, contemplate any division of the estate of Kishen "Lall among the persons they loosely styled his heirs.

"Nevertheless, whatever may have been the intention of the arbitrators, it does ap-"pear that the ladies, whom we have been induced to believe the arbitrators intended "to be the trustees of the estate, in course of time came to regard themselves as each "individually possessed of one-third in the property; and if the 12 years' rule, and not "the 60 years' rule of limitation is to be applied, there may be some ground for con-"tending that Mussumat Doorga is entitled, as heir to her mother, to the possession

" of the one-third of the property which her mother obtained after the date of the " award and the decease of Mussumat Punnoo. In the view we have taken of the " limitation plea, it is unnecessary for us to express an opinion on this point.

" It next behoves us to consider the plea of Mussumat Doorga, that the plain- " tiff is estopped from preferring this claim on behalf of Government by the acts of the " Government and its officers. The acts referred to are, the settlements of certain of " the villages, the khanakali grant of other villages, the farm grants of other vil- " lages, the mutation of names in the Collector's registers, and the purchase of land " above mentioned in 1862 by the Collector.

" The general rule as to the liability of Government for the acts of its servants, " was laid down by the Lords of the Privy Council, in the Collector of Masulipatam " *versus* Cahaby Venoata Narrainapah, (8, M. I. A., 554) where their Lordships declared " such acts to be binding on the Government only when the officer 'is acting in the " 'discharge of a certain duty within the limits of his authority, or, if he exceed that " 'authority, when the Government in fact or in law, directly or by implication, ratifies " 'that excess.'

" Undoubtedly Settlement Officers are entrusted with very large powers. They " have to determine what revenue property represents the interest which the Govern- " ments claims in the soil of every acre in these Provinces; they have to take engage- " ments for the payment of that revenue from persons whom they may find in pos- " session as zemindars, or in the absence of zemindars, or of zemindars willing to " engage, they may take engagements from other persons whom they may select as " best entitled to engage, and in settling estates in which the Government have here- " tofore recognized no proprietor, and which are consequently termed khanakali (the " proprietary column in the register having been left blank). They may, on behalf of " Government, recognize the persons having the best title to be zemindars as old in- " habitants or village managers, and confer on them the zemindaree, and they must in " the exercise of the duties above mentioned, frame a record of the rights of those whom " they consider to be in possession of rights. To enable them to do this, they have been " entrusted not only with executive but with judicial powers of a summary nature. " These judicial powers are exercised when there is a contest between rival claimants " before them. Unless the Settlement Officer be acting judicially, and dealing ques- " tions of contested right, he cannot, by his recognition or record, confer on the person " whom he records as in possession of the soil a title which will be good against all " claimants. To explain what we intend to convey more clearly: he cannot by " recognizing a Hindoo widow as in possession, and making a settlement with her, con- " fer on her a title against a reversioner as to the property in respect of which settle- " ment has been made with her; he cannot confer on a trespasser whom he may erro- " neously admit to settlement a title to the rights in the soil, of which he considered " him possessed, which would prevail against the rightful owners who may come for- " ward to contest it in proper time and if the acts of the Settlement Officer be only " so far operative in the cases of private persons, is there any good reason to hold that " they have more force against the Government? Undoubtedly, in making settlements, " the ordinary right which Government possesses in the soil is limited, and, we may say, " demised for a certain rent; but no Settlement Officer would be entitled to waive any " extraordinary right of Government, as, for instance, a right not to a portion only of " the profits of the soil but to the whole of the soil itself. The Settlement Officer with- " out special authority would not cede a reversionary or escheat right held by the Gov- " ernment. There is no evidence of any such authority. The khanakali grant in " 1851 affords, indeed, a very strong argument to the defendant in support of her plea of " estoppel, so far as concerns the property comprised in it, for by that grant the zemin- " daree was conferred on the persons named in the grant, under the express direction of " the Lieutenant-Governor; still, even after such a grant, we consider it was competent

" to any one who claimed title to the lands held by the grantees, and in respect of " which the grant was made, to have come forward and claimed the lands, and if his " title had been proved to have obtained them

" It is, moreover, we think, to be fairly concluded from the circumstances, that the " Government was not aware of its rights, nor of the facts which gave rise to those " rights, until 1862 or 1863, and without such knowledge it could hardly be contended " that the acts of its officers amounted to estoppel.

" As to the mutations of names in the registers, they have never been regarded " in this country as conferring title, though they may be used as evidence of title by " Regulation VIII of 1860, Section 21. It was expressly enacted that the entries should " not in any way affect the right of parties who may establish a right of property in " in the Dewanny Adawlut. The purchase made by the Collector we hold of very " little importance. It could at the outside amount only to an admission, and an ad- " mission made in ignorance of the facts, and by an officer who had no authority by " admissions to destroy the rights of the Crown

" In support of the view we have taken of the first part of this plea, we refer to " the case of the Government of Bengal *versus* Girdharee Lall Roy (4, W R, 13), " which has recently been decided by the Privy Council, 17th July, 1868 In that " case, the Government, although they were aware that they possessed a doubtful claim " by escheat, by a special perwannah allowed the person who claimed to be heir to be " recorded as in possession, and gave him a certificate acknowledging him as the *bonâ fide* " proprietor of the estate of the deceased, and subsequently received rent. The Courts " in this country held that the Government was not estopped from preferring its claim " to the escheat and disputing the title of the heir, and this finding their Lordships " of the Privy Council appear to have considered sound.

" We have now disposed of all the pleas which have been put forward by Mus- " sumat Doorga in answer to the plaintiff's claim, and, on the best consideration we " can give them, we have arrived at the conclusion that they do not enable her to re- " sist successfully the right of the Government to the property in suit The plaintiff " on behalf of Government concedes that Mussumat Doorga is entitled to maintenance. " It is, therefore, unnecessary for us to consider whether she could legally insist on that " right, we have only to declare the amount she shall receive. We feel bound to state, " in fairness to this lady, whose chastity has been impugned by the plaintiff, that not a " particle of evidence has been offered to support the allegation, and after the remarks of " the Judge, it should not have been persisted in. Having regard to the value of the estate, " we award her Rs. 50 per mensem as maintenance, to be paid from the date on which " the Collector took possession of the property. The claim of the plaintiff as against " Toolsee Ram will be governed by the observations which we have above made in res- " pect of the claim as against Mussumat Doorga, and must for the same reasons be " decreed. The claim as against Goolzaree Mull we are most unwilling to decree. He " purchased at auction the property sought to be recovered from him in 1850, in satis- " faction of a decree which had been obtained against Mussumat Punnoo. Mussumat " Punnoo had at the best a life-interest in the property, though it seems to have been " assumed by the defendant that she was in possession as a full proprietor. But we " have no alternative but to decree the claim against him, and recommend him to the " indulgent consideration of Government.

" The defendant Gopinath has been improperly made a party to this suit, no relief " was sought against him, and no claim advanced by the plaintiff to the property held " by him. He should not have been made a party, but have been referred for the redress " of his private grievances (if he had any) to a separate suit. The suit is dismissed " as against this defendant, but he must bear his own costs.

"As to the costs of the other parties, had we control over the fund, we should "direct that they should be paid out of the estate. We cannot pass this order, but, "inasmuch as by the present judgment possession of the property is awarded to Go- "vernment, we pass such an order as we are competent to pass, and which will effect "our object. We direct that the plaintiff bear the costs of all parties in the suit and "appeal, except the costs of the defendant Gopinath.

"C. A. TURNER, *Judge.*"

"*Dated 28th August* 1868. "R. SPANKIE, *Judge.*"

Himmut Singh *v.* Collector of Bijnour.

22. The appeal in this case, preferred by Government, see paragraph 42 of last year's report, has been decided against the Government. The decisions in the several Courts will be found below :—

"Rae Himmut Singh (Plaintiff),

"*versus*

"The Collector of Bijnour and others (Defendants).

"THIS is a suit by the plaintiff to establish his proprietary title to, and to obtain "possession of, the property in suit; to set aside certain sales and alienation that have "taken place; and to obtain Rs. 4,569-2-0, malikana due to him.

"The cause of action arose, it is said, on the 1st January, 1854, with reference "to the properties numbered 1 to 15 in the plaint; on the 19th April, 1865, with "reference to the property No. 16; and on the 19th July, 1865, with reference to the "properties Nos. 17 to 49; which have been, or are to be sold. The plaintiff con- "tends that the property in suit belonged to his ancestor.

"After him, Tupraj Singh succeeded to the property. He left two sons, Jehan "Chund and the plaintiff, and his widow Ranee Gyan Kour.

"Jehan Chund became the recorded proprietor. He was murdered. Ranee "Gyan Kour was then recorded as the owner of the property. After, the widows "of Jehan Chund, Soondur Kour, and Darib Kour were recorded. In 1833, these "ladies, it is contended, requested the revenue authorities to record the plaintiff as "proprietor of the property in suit; that, at the settlement under Regulation IX. of "1833, and in the year 1836, the plaintiff was recorded the proprietor, and is so "recorded at the present time; that he refused to engage for the payment of the "revenue assessed, and in consequence the estates were farmed, and he received mali- "kana, or an allowance of five per cent. on the jumma; that he received this allowance "to the close of 1853, when it ceased by an order of the Collector, dated 5th October "1853, on the properties Nos. 1 to 14 and 16; that, from January, 1854, the said "allowance was paid into the Government treasury by the farmers, and the allow- "ance due from the estate No. 15, was enjoyed by the mokuddums of the said "estate.

"With reference to the properties Nos. 17 to 49, it is contended that they are "jungle estates, and some of them have been illegally sold as grants by the Collectors; "that the plaintiff protested at the time of the sale, asserting his rights, but his objec- "tions were not admitted; that the properties Nos. 45 to 49, sold as grants, are not "grants; that the boundaries of the said properties are clearly defined, and the village "sales unknown.

"It is further contended for the plaintiff, that the Collector had not any cause, "with reference to the property in suit, to take action on the proclamation, dated

" 12th September, 1848; that his (plaintiff's) proprietary title was clear and defined; " that there were not any claimants, and the Collector had no right to interfere; that " such orders, by Clause 12, Section I., Act XIV. of 1859, may be set aside within " 12 years; that Act XIII. of 1848, does not apply to this case, nor does Clause 6, " Section I., Act XIV. of 1859.

" It is contended, with reference to Raipoor, No. 16, that the farmer's rights " were confiscated for rebellion, but that fact does not bar the plaintiff's claim, and " that Act IX. of 1859, does not apply; that the vendee of the farmer's rights paid " to the Government the malikana due to the plaintiff.

" The amount of malikana demanded from Government for the years 1854 to " 1865, is Rs. 4,321-10-0; that from farmers, viz., from Ghasee, Dulloo, Silloo, is " Rs. 247-8-0.

" The defence on the part of Government is as follows, I take the written state- " ment of the Collector:—

" 1st.—That when Rohilkund was ceded to the British Government the plaintiff " was not in proprietary possession of the estate in suit, and never has been.

" 2nd.—That at the 9th settlement, the Settlement Officer did erroneously, under " a wrong presumption of the plaintiff's title, assign to the plaintiff malikana, or an " allowance of five per cent. on the jumma; that, subsequently, the Board of Revenue " disallowed it.

" 3rd.—That the Collector, acting according to the instructions of superior autho- " rities, and under the powers vested on him by Sections 17, 28, Regulation VII. of " 1822, and Government Order No. 4550, dated 17th September, 1848, on the " 1st October, 1853, formally declared the plaintiff's alleged proprietary rights in the " estates in suit to be non-existent, and directed that from 1st January, 1854, the pay- " ment of malikana should cease.

" 4th.—That the order of the Collector should have been contested within three " years from its promulgation, and hence the suit is barred by Section 16, Act XIV. " of 1859.

" 5th.—That the claim to village Raipoor, No. 16, is barred by Act IX. of 1859, " Section 20.

6th.—That with reference to the forest mehals, Nos. 45 to 49, the plaintiff's " claim is barred by Section 5, Act XXIII. of 1863, as the plaintiff did not notify " his intention of contesting the Collector's order, dated 19th July, 1865, and, in fact, " did not contest it within one week from the date of its issue.

" So far as regards the Government, the points in issue appear to be the following:—

" 1st.—Is it a fact that, from the cession of Rohilkund to the British Government " to the present time, neither the plaintiff nor his ancestors have held proprietary pos- " session of the property in suit?

" 2nd.—Is the suit barred by Clause 6, Section 1, Act XIV. of 1859?

" 3rd.—With regard to Raipoor, No. 16, is the claim barred by Section 20, Act " IX. of 1859.

" 4th.—With reference to properties Nos. 45 to 49, is the claim barred by Sec- " tion 5, Act XXIII. of 1863; or, is it that the said properties are not within the " scope and meaning of the said Act, and that it is not applicable?

"I have carefully weighed the arguments of counsel, and I have taken into consideration the precedents brought to my notice. I consider this suit barred by Act XIII. of 1848.

"I think the order passed by the Collector on the 1st October, 1853, in his capacity of Settlement Officer, under the provisions of Section 20, Regulation VII. of 1822, and the proclamation of Government dated 12th September, 1848, and in accordance with orders received from Government and the Board, marginally* noted, is a judicial order within the meaning and scope of Act XIII. of 1848, and Clause 6, Section 1, Reg: XIV. of 1859, and that it should have been contested within three years from its promulgation. This view is borne out by the precedents noted in the margin.† Counsel for the plaintiff urges that he was not a party to the proceedings; that the Collector, *suo motu*, and without cause, took up the case, and reported to Government that there were no claimants; that there must be a claimant before there can be an award under Act XIII. of 1848; and that it was absolutely necessary to make his client a party to the proceedings. I think these arguments are disposed of by the judgments of the Sudder Court, No. 54, dated 27th June, 1855, and paragraph 5 of the Notification of Government No. 4550, dated 12th September, 1848. Even supposing Rae Himmut Singh was not a party to the proceedings, his cognizance of the proceedings cannot be doubted; yet the order of the Collector, be it right, be it wrong, expunging his name from the records as proprietor, and recording the names of others, is a declaratory order giving adverse possessory title to the party recorded, and such order the Sudder Court held to be judicial award within the terms of Act XIII. of 1848. This view seems confirmed by the judgment No. 269, 8th June, 1865.

* Government letter No. 2074, dated 17th May, 1852.
Government letter, dated 29th June, 1853.
Letter Sudder Board Revenue, No. 305, dated 8th July, 1853.

† No. 54, dated 27th June, 1855.
Koora, plaintiff, appellant, No. 269, 8th June, 1865.
Gholam Hussein Khan and others, defendants, appellants, No. 713, 21st September, 1863
Narain Singh, and others, defendant, appellants.

"By para. 5 of the notification above mentioned, the Collector, *suo motu*, is competent to complete the record of rights in land, or to correct the existing record whenever it is found at variance with fact.

"I also think that, with reference to Raipoor No. 16, the claim is barred by Act IX., 1859, Section 20.

"The Collector is wrong in stating that Section 5, Act XXIII. of 1863, bars the claim to the properties Nos. 45 to 49. Had he acted in conformity with law, the plea would have been good; but he did not cause a copy of his order to be given to the plaintiff.

"Whether the forest properties are grants within the scope of the terms of Section 205 of the Directions to Collectors, I need not determine, for, by the order of the Collector, the plaintiff's alleged proprietary rights in all the property in suit were declared non-existent, and his name expunged from the record of rights. Holding this suit to be barred, I need not take into consideration the defence of the co-defendants, nor the merits of the claim of the plaintiff. This suit is dismissed with costs.

"C. R. LINDSAY, *Judge*."

Present:
MORGAN, KNT., C. J.,
and
SPANKIE, J.

17th June, 1867.

No. 31. of 1867.

"Rae Himmut Singh, Appellant,

"*versus*

"The Collector of Bijnour, Respondent.

"This was a regular appeal from the decision of Mr. C. R. Lindsay, the Civil Judge of Moradabad, dated the 3rd October, 1866.

"Moulvie Furreed-ood-deen Ahmed, Pundit Bishumbher Nath, and Moulvie "Mahomed Hyder Hossein, for appellant, the plaintiff

"Lalla Man Rae, for respondent, the defendant

"THE plaintiff sues to establish his proprietary title and obtain possession of "certain estates, detailed in the petition of plaint, to avoid certain sales and aliena- "tions made by the Collector on the part of Government, and to recover Rs. 4,569-2-0, "malikana or proprietary allowance.

"The estates in suit comprise a taloukdaree of which it is averred that the plaintiff's "ancestors were proprietors Tupraj Singh was the recorded proprietor in 1807, and "received, as such, a proprietary allowance of Rs 4,058-12 0 per annum, and it is "alleged that this sum was paid to him monthly until his death in 1817 His widow, "Ranee Gyan Koonwur, and minor son, Jehan Chund, succeeded The latter was sub- "sequently murdered, and the names of his widows, Soondur Koonwur and Durub Koon- "wur were recorded as proprietors. In 1833, these ladies requested the Collector to "record Himmut Rae, the younger son of Tupraj Singh as proprietor, and he was "acknowledged and registered as such in 1836, on the completion of the settlement "under Regulation IX of 1833. He was not allowed to engage for the payment of "the Government revenue, his ability to manage the property being considered doubt- "ful, but he was awarded, and received a proprietary allowance of five per cent on "the demand made on all the estates.

"The plaintiff maintains that he continued to receive this proprietary allowance until "the close of 1853, when it lapsed by an order of the Collector, dated 5th October, as "regards the estates Nos 1 to 14 and 16 The parties in possession of No 15, retained "the five per cent. on the Government demand of this estate, and from January, 1854, the "allowance on account of the other estates was paid into the Collector's treasury by "the mookuddums with whom they are settled. The properties Nos 17 to 49 are forest, "and have been illegally sold as grants by the Collector, in spite of the plaintiff's re- "monstrances to the contrary, and Nos. 45 to 49 were really defined estates, and the "traces of the village sites on them were to be found

"The property No. 16, Raipore, was confiscated for rebellion, but the farmer's "rights, and not the plaintiff's, were sold.

"It was contended on the part of the defendants that the plaintiff never had pos- "session of the property in suit, that the Settlement Officer had erroneously admitted "the plaintiff's title, and assigned to him a proprietary allowance without authority, and "that this allowance had been subsequently withheld by the Board of Revenue. It "was also urged that the Collector was acting under Section 20, Regulation VII. of "1822, when he declared the plaintiff to have no proprietary rights, and expunged his "name from the register The suit, therefore, was barred under Act XIII of 1848, "and Clause 6, Section 1, Act XIV. of 1859 The claim to Raipore was barred by "Section 20, Act IX of 1859, and that to the properties Nos 45 to 49, by Section 5, "Act XXIII of 1863, as the Collector's order regarding them was dated 19th July, "1865, and the plaintiff had omitted to contest it within the limit prescribed by law

"The Judge found that the suit was barred by Clause 6, Section 1, Act XIV. "of 1859, as the Collector in 1853 was acting in his capacity of Settlement Officer, and "under the provisions of Section 20, Regulation VII of 1822, and the Government "Notification of the 12th September, 1848, that the Collector, under paragraph 5 of "this Notification, was at liberty to take action on his own part, and that the effect of "his order was to declare judicially that the plaintiff had no proprietary possession of "the property in suit The present claim, therefore, should have been brought into "Court within three years from the date of the Collector's order.

"The Lower Court also considered that the claim to Rupore was barred by the "order of confiscation, which under Section 20, Act IX. of 1859, should have been "contested within one year. But with respect to the forest grants Nos 45 to 49, "the Judge held that there was no bar, inasmuch as the Collector himself had failed

"to give the plaintiff the notice of his order required by law. On the merits gene-
"rally, the Lower Court, finding the suit barred, came to no decision.

"It is contended in appeal, that the Collector's order of the 5th October, 1853,
"was not a judicial award between two parties; that the settlement had been concluded,
"and the Collector, even if acting under the provisions of Section 20, Regulation VII.
"of 1822, could not interfere with it. Section 20, Act IX. of 1859, was no bar to
"the claim for Raipore, inasmuch as the proprietary rights were not attached and
"confiscated, and what happened to the farmer did not affect the plaintiff, the proprietor.
"The other pleas have reference to the plaintiff's claim on the merits, and need not
"now be considered.

"We are clearly of opinion that the suit is admissible. The facts set forth by
"the plaintiff are not apparently denied by the defendants. As far as we are in a
"position to judge from the record, the Collector of the day, in 1852, or perhaps before
"that year, reported unfavourably to the plaintiff's title as regards the property in suit,
"and the Government, on the 26th June, 1853, passed orders on the correspondence
"to which the report had given rise, and the Collector gave effect to those orders on
"the 25th October, 1853. The respondents are quite unable to show by any evidence
"that the Collector was acting under the provisions of Section 20, Regulation VII.
"of 1822; but even if he was, or believed himself to be so acting, the Section on
"which the defendants rely does not confer on Collectors the power of remodelling
"arrangements completed by the Settlement Officer under Section 10 of the Regu-
"lation. Nor can any notification of Government extend to Revenue Officers an
"authority that the law does not allow to them. Section 10 is not referred to in
"Section 20 of the Regulation, which provides for the extraordinary exercise, by Col-
"lectors and other Officers making settlements, of the powers specified in Sections 11,
"12, 14, 16, 17, 18 and 19. The Settlement Officer had already recognized the
"plaintiff's title in 1836, and had assigned an allowance of five per cent. on the Gov-
"ernment demand upon the talooka for the maintenance. The mookuddums and
"farmers appear to have been permitted to engage directly for the payment of the Gov-
"ernment demand; so that the Collector had no power in subsequent years, during
"the pendency of this completed settlement, to interfere with the arrangements of the
"Settlement Officer, except, indeed, to the extent allowed by Section 20 of Regulation
"VII. of 1822.

"The Judge has followed the late Sudder Court's decision of the 8th June, 1865.*
"But on looking into this precedent, we find that it does not conflict with the view of
"the law above expressed. In that case, the learned Judges declare that the order of
"the revenue authorities, which the plaintiff was desirous of setting aside, expressly
"provided that the title which it conferred should have effect after the conclusion of a
"then-existing farming lease, and that it in no way disturbed the settlement arrange-
"ments. Again, the principle laid down that existing settlement arrangements cannot
"be disturbed by Collectors, except under the provisions of Section 20, Regulation
"VII. of 1822, has for many years been in force, as will be seen from the precedents †
"But even if the Collector had been acting under the provisions of Section 20, and
"under the authority vested in him by paragraph 5 of the Government Notification
"of the 12th September, 1848, had himself set in motion inquiries into the position of
"the plaintiff in regard to the mookuddums and farmers of the talooka, we should not
"have considered the order of the 5th October, 1853, a judicial award, as contemplated
"by Act XIII. of 1848, and Clause 6, Section 1, Act XIV. of 1859. The most ap-
"proved ruling‡ of the Courts regarding awards of this nature passed by Collectors,
"has been that they are judicially binding upon those persons alone who have been
"parties to some contest before the Revenue Officer. In this respect such awards

* I. Dec., S. D. A., N.-W. P., 1865, p. 329.

† S. D. A., N.-W. P., 1851, p. 21.
S. D. A., N.-W. P., 1855, p. 76.

‡ S. D. A., N.-W. P., 1854, p. 45.

"correspond to judicial decrees made by the ordinary Civil tribunals. It is not to be "maintained for a moment in this case, that the mookuddums or farmers had instituted "any proceedings under Section 20, Regulation VII. of 1822, as against the plaintiff. "Nor had the plaintiff questioned their position. The Collector is admitted to have "been acting *proprio motu*. Under these circumstances, his order would have no judi- "cial effect against the plaintiff. It has been held by the High Court of Bengal,* "in support of the doctrine laid down in the late Sudder Court's decision referred to "above, that Act XIII. of 1848 applies only to suits for the purpose of contesting the "justice of an award as between the contending parties, and not to those the object "of which is to amend a settlement and establish the rights of persons who were not "before the Collector.

No. 474 of 1866.
Pearee Lall, Appellant,
versus
Buldeo Pershad, Respondent.
16th August, 1866.

"A late decision of this Court follows the same principle, which may be accepted "as the correct one in cases of this description, and it is as "readily applicable to Clause 6, Section 1, Act XIV. of "1859, as to Act XIII. of 1848, which it may be said to "replace. Entertaining this view of the case, we hold that "the plea of three years' limitation cannot be maintained in bar of the suit.

"A question now arises whether this suit has been instituted within the period "of limitation which would otherwise apply, that is to say, within twelve years from "the date of the cause of action. If it be held that the Collector's order of the 5th "October, 1853, is the cause of action, then this suit, having been entered on the 11th "September, 1865, is within time. But it has been argued that the orders of the Gov- "ernment, North-Western Provinces, dated the 29th June, 1853, directing the Col- "lector to discontinue the payment of the malikana, constitute the plaintiff's cause of "action. We cannot, however, accept this view of the matter. The cause of action "must be held to be the order of the 5th October, 1853, which really gave effect to "the orders of Government, and by which it became known to the plaintiff that he would "henceforth be deprived of his proprietary allowance from 1854, and that his proprie- "tary title to the forest and other property was ignored.

"With regard to the estate of Raipore, the claim to which the Judge has found "to be barred by Section 20, Act IX. of 1859, we are of opinion that the Lower "Court has arrived at its conclusion on insufficient, or rather upon no evidence at all. "No reasons have been assigned by the Judge, and the record does not appear to us to "afford sufficient data for a satisfactory finding. The estate was attached in 1858, "and a sale took place in April, 1865; but we have failed to ascertain whether the "proprietary title, or only the rights of the farmer, were attached and sold. The plain- "tiff maintains that the farmer's rights were alone sold, whilst the defendant contends "that the zemindaree title was conveyed by the sale. It will be necessary for the "Judge to re-consider his finding in regard to this estate, and to bring out more clearly "the nature of its attachment and sale.

"That portion of the Judge's decision which rejects the plea of defendants, that Sec- "tion 5, Act XXIII. of 1863, bars the plaintiff's claim to the properties Nos. 45 to "49, has not been questioned before us, and, indeed, the Collector, having failed to "comply with the law by giving notice to the plaintiff of his intention to dispose of "these estates, could not equitably plead that in consequence of his omission the plain- "tiff had not contested his order within the prescribed period.

"Having now dealt with the main pleas of the appellants, and not having the "means on the record to enable us to determine the suit on its merits, we are under "the necessity of returning it to the Judge, in order that he may take up and dispose "of all the pleas, and so arrive at a satisfactory solution of the points at issue between "the parties. We therefore decree the appeal with costs, and remand the case under "Section 351, Act VIII. of 1859.

* F. B., H. C. Bengal, 1863, p. 128.

" Rae Himmut Singh, Plaintiff,

" *versus*

" Collector of Bijnour and others, Defendants.

" CLAIM for declaration of title in certain estates in Tehseelee Nujeebabad, Zillah " Bijnour, and for possession thereon at the close of settlement terminating July, 1866.

" The property claimed by the plaintiff consists of 49 mouzahs, which will be refer- " red to by their numbers, corresponding to the list filed. Nos. 1 to 16 consist of cul- " tivated estates in which the proprietary right is claimed by private individuals; Nos. " 17 to 49 of forest lands, in which the sole proprietary title is claimed to be vested " in the State, except in Nos. 45 to 49, in which it has been sold to co-defendants.

" The plaintiff sues to establish his proprietary title in all these estates, and " to set aside certain sales and alienations that have taken place, and to recover the " arrears of malikana which was adjudged payable to him at the 9th settlement, under " Act IX. of 1833, and which have been withheld by the Government.

" His case is, that the entire property was held by his ancestors, Rae Tupraj Singh, " his father, being the proprietor at the time of the cession of Rohilkund to British " rule; that on the death of Tupraj Singh, the estates devolved on his son Jehan Chund, " who was subsequently murdered, when the names of Gyan Roour, widow, and after- " wards of the widows of Jehan Chund, were recorded as proprietors, and in 1833, the " plaintiff's name was entered; that, owing to the imbecility of Rae Tupraj Singh, and " the minority of Jehan Chund, these estates were held under Court of Wards, under " Regulation 52 of 1803, and an allowance made for the maintenance of the family of " Rs. 4,058-12-0 per annum; that this state of things continued till the 9th settlement, " when the proprietary title of the plaintiff, and his right to engage for the revenue, " were acknowledged by the Settlement Officer, Mr. Lushington, but that in conse- " quence of his refusal to engage owing to severity of tenures, the estates were farmed, " and the usual malikana allowance at five per cent. on the jumma adjudged payable to " him by the farmers, who entered into agreements to that effect; that this state of " things continued until 1853, plaintiff receiving the malikana, when the Government, " acting upon Mr. Dick's report, disallowed his title as proprietor, conferred it upon " others, and stopped his malikana allowance, by their order, 29th June, 1853, and " Collector's order, 5th October, 1853.

" The detail of arrears of malikana are given in a statement with the plaint.

" That the above proceedings of the Government were illegal, and contrary to the " facts of the case, and so far to the establishment of his title.

" The case originally came on for hearing before Mr. Lindsay, who took up only the " pleas of the defendants in bar, but these were disposed of in appeal by the High " Court's judgment, dated 17th June, 1867, in favour of the plaintiff, and the case " remanded for trial on its merits, and for decision on a plea in bar, under the limitation " law, respecting estate No. 16, Mouzah Raipoor.

" I will, before going further into the case, take up this last. The contention of " the defendant, Banwaree Dass, is that this estate was confiscated and sold by Govern- " ment for the rebellion of Ahmud Shah, and the plaintiff's claim is barred by Section " 20, Act IX. of 1859. The plaintiff contends that Ahmud Shah was only a farmer, and " only the farmer's rights and interests were attached and sold. I sent for such docu- " ments as might throw light on the point, and find (see order of confiscation, 27th " July, 1858, list of property attached, &c.), that the entire estate was attached and sold " without any reservation of rights. There could have been no such reservation, as the " Government, as this suit shows, did not recognize the plaintiff's title, and conferred " the proprietary title on Ahmud Shah, for whose rebellion the property was confiscated. " The farmer's right could not have been confiscated and sold, for if Ahmud Shah were

"only a farmer (which, however, is not the case), he would have been farmer of the "Government revenue, and the Government would never sell such a title, but resume "it, and make other arrangements for its revenue. The plaintiff, therefore, not having "brought his claim within the term allowed after date of attachment by Section 20, "Act IX. of 1859, his present suit in reference to Mouzah Raipoor is barred.

"I now go into the general defence.

"The case for the Collector is, that the plaintiff's ancestor was not in proprietary "possession of these estates at the cession, and never has been; that the Settlement "Officer in the 9th settlement erroneously recognized his title, and assigned him mali-"kana at five per cent. on the jumma, but it was disallowed by the Board of Revenue, "and it has been contended that the estates were never under the Court of Wards, and "the allowance alluded to by the plaintiff, as assigned to him after the cession, was a "mere pensionary allowance.

"The case for the co-defendants, in all the estates except Nos. 8 and 9, 12 and "13, rests on the grant to them, or those from whom they hold, of the proprietary "title by the Government, and not upon any individual claim to the proprietary title.

"In estates Nos. 8 and 9, Bishen Singh, son of Suntoke Rae, further claims by "proprietary possession antecedent to the cession. The grounds of his claim will be "noticed further on.

"In estates Nos. 12 and 13, Mussumat Sukeena Begum claims by proprietary "possession of her ancestor since the 9th settlement.

"The estates Nos. 17 to 49 are forests, the title being claimed by Government, "except in 45 to 49, where they have been sold to different parties, co-defendants, who "contend that their title by purchase is a complete title, and they are improperly "impleaded.

"One defendant, Ata Hossein, admits plaintiff's title in estate No. 12, Dheerpore, "but the defendants Mussumat Sukeena and Sadutt-ool-nissa put in their claim.

"The original issues were laid by the Principal Sudder Ameen, but as so much "had been settled by the High Court's decision, I thought it best to revise them, "by throwing out the issues decided, which comprise all the issues in bar; and the "remaining issues are as follows (omitting the issues relating to Raipoor, No. 16, "which I have decided above):—

"1*st*.—Has the plaintiff the proprietary title in the estates under dispute, Nos. 1 "to 15, inasmuch as his ancestors were in possession of proprietary rights at the "time of the cession of Rohilkund, and from that time down to and subsequent to the "settlement under Regulation IX. of 1833, when his title was recognized and awarded "by the Settlement Officer, acting under Regulation IX. of 1833, where his title "was recognized and awarded by the Settlement Officer, acting under Regulations "VII. of 1822, and IX. of 1833, until dispossessed by orders of Government dated "29th June, 1853, and is he hence entitled to repossession on these estates, on the "expiry of the present settlement?

"In like manner, is he entitled to repossession on the estates Nos. 17 to 49, "forest grants, or have neither the plaintiff's ancestors nor the plaintiff been in "possession of proprietary rights in the disputed estates, either before or at the "time of the cession of Rohilkund, and have no title to proprietary rights; and was "the recognition of the plaintiff's title by the Settlement Officer in the 9th settlement "erroneous, and not binding, inasmuch as it never received the sanction of Govern-"ment; and do the co-defendants hold under a valid title?

"2*nd*.—Is plaintiff entitled to malikana claimed by him on the estates in dispute; "or is the claim inadmissable, owing to the non-existence of the plaintiff's proprietary

"title, and the absence of sanction and confirmation of the Government to the award "of the Settlement Officer granting the malikana?

"*3rd.*—As to Nos. 45 to 49 inclusive, are the co-defendants who purchased these "grants at auction-sale properly impleaded?

"I admitted further documentary evidence, as it was essential to elucidate the case.

"I will notice the evidence separately as it relates to the estates Nos. 1 to 15, "and the forest tracts, 17 to 49, the title of the purchasers of Nos. 45 to 49, and the "claim to malikana.

"First, as to Nos. 1 to 15. These estates lie in pergunnahs Nujeebabad, Keeruth-"pore, Akberabad—zillah Bijnour. Nearly all the evidence consists of documents; "that filed by the plaintiff consists of authenticated copies of the settlement records of "the 9th settlement, copies of various orders issued by the former Government "Officers, and original letters or perwannahs of former Collectors to plaintiff or his "ancestors, certain dakhilas or receipts for Government revenue on some of the "estates, and authenticated copies of English official letters of various Government "Officers, the object in view being to show that his father, Rae Tupraj Singh, was the "acknowledged proprietor of these estates at the cession; that, owing to his imbecility, "they were placed under Court of Wards, and a proprietary allowance given, his title "all along acknowledged, and the allowance continued till the 9th settlement, when "malikana was given on the jumma, and paid, until stopped in 1853.

"The evidence filed by Collector consists of portions of the correspondence "that passed between the Government and its Officers, from 1836 to 1853, and much "stress is laid on Mr. Dick's, the Collector's, report to Government, dated 13th May, "1851, referring to a report from Mr. Lloyd, former Collector, dated 30th November, "1806, as establishing his case.

"Unfortunately, this letter is not forthcoming. There has been filed a supposed "translation of it, stated to have been made for the old Government pleader's use in a "former Civil suit, and made over to the present Government pleader with his papers, "but the translation has no signature, nothing to show that it is authentic, and is so "unintelligible and obscure, as to confuse rather than enlighten this case.

"An important portion of the plaintiff's evidence consists of the records of the 9th "settlement, namely, of the reports then made of the history of the estates, called "'Halat Debi'; of the reports of the Record-keeper, giving the history of the family "and estates, as far as shown in the official records; of the final proceeding of Mr. "Lushington, Settlement Officer; and engagements taken from the several farmers to "pay plaintiff his malikana. These documents deserve great consideration, as their "originals formed part of the settlement records, and the first two are compiled from "official records.

"I find from them the following facts:—That the 1st settlement of all the 15 "estates, and in some instances the 2nd, were made with Rae Tupraj Singh, either in "his own name or through his mookhtear, on his account; that the subsequent settle-"ments were made with various farmers, changing with different settlements; that "plaintiff's ancestors' names have from the commencement of our rule been entered as "proprietors in the official registers; that, owing to the imbecility of Rae Tupraj "Singh, and minority of his son, the estates came under Court of Wards, the first "entry of this circumstance being in the 3rd or 4th settlement, corresponding to 1809 "or 1812, and continued so until the 9th settlement came on; and that the Collectors "of the day invariably admitted transfer of names as proprietors of the various mem-"bers of the family, as occasion required.

"I also find that at the 9th settlement no claimants to the proprietary title came "forward, and that the several persons with whom the estates were farmed, owing to

"the refusal of plaintiff to engage, owing to severity of terms, admitted the plaintiff's "title as proprietor in their engagement to pay him malikana.

"The above facts, apparent from the Settlement records, are confirmed by other "documents. I refer amongst others to Mr. Boulderson's, the Commissioner's, proceed-"ing, dated 18th December, 1829, recapitulating the history of the estates. In this, he "also refers to Mr. Lloyd's report, and mentions the allowance payable to the family as "'Huq malikana.' The fact, also, that these estates did come to be placed under "Court of Wards, which is tantamount to proprietary possession by plaintiff, is, I "think, placed beyond a doubt by the letter from Collector of Moradabad to Secre-"tary to Board of Revenue, dated August 19th, 1820, in which unmistakable refer-"ence is made to this fact, and Regulation 52 of 1803, quoted also by the perwan-"nah of the Collector, dated 19th February, 1814, referring to this Regulation and re-"quiring one of the family to nominate a 'Surburakar.'

"Perwannah of 28th December, 1820, and other documents, point to the same "fact; see particularly that of 20th May, 1814.

"The only document filed by plaintiff with reference to the arrangements made "by Mr. Lloyd, is the confirmation thereof by the Governor-General in Council, but it "does not throw light on what they were; it is merely to the effect that 'the Governor-"'General in Council has been pleased to approve the arrangements made by you for "'the security of the public revenue of the estate of Tupraj Singh. The Governor-"'General in Council has also been pleased to sanction the allowance of Rs 4,058-12-0 "'per annum, proposed to be granted to Tupraj Singh for his subsistence.' There is "nothing, however, in this to show that his rights had been questioned, ignored, or "waived.

"The allowance, as far as the evidence goes, appears to have been a sum calcu-"lated on the jumma of his estate. It is called 'zemindary nankar,' in the letter of "the Collector, dated 19th August, 1820, and 'huq malikana' by Mr. Boulderson, "and coupled with the fact of the estates being held under Court of Wards, when some "allowance would naturally be made, but would not carry with it abrogation of pro-"prietary title, I consider that this could not have been allowance involving loss of "title. In one letter from Assistant Collector to the Board, and their reply, dated 19th "December, 1822, and 13th June, 1822, it is called a pension, but taken with the "above circumstances, it would not appear to have been such a pension as carried loss "of proprietary title.

"I have given the evidence on the other side very careful consideration.

"It will be seen from the letter from Secretary to Government, dated 20th De-"cember, 1837, that the Government never confirmed the Settlement Officer's proceed-"ing, as far as it related to the record of rights, and its revision was directed at that "time, but nothing appears to have been done until 1844 (see Government letter, 28th "December, 1844), when revision was again ordered under Section 20, Act VII. of "1822. There is a gap in the evidence till 1851, when Mr. Dick sent in his report, "upon which the Government finally acted in its order of 29th June, 1853, out of "which came this suit (see Government letters 17th May, 1852, and 29th June, 1853), "when the plaintiff's rights were negatived, and full proprietary settlements directed to "be made with all the farmers in possession, except in Khooshalpoor, No. 15, where "the Mookuddum Roopa was restored to his proprietary rights, and the title of Go-"vernment recognized to the forest tract. The reasons, then, for the action of Go-"vernment, may be considered based on Mr. Dick's report, which refers to the estates "in dispute, and is dated 17th May, 1851, and I find he based his opinion adverse "to the plaintiff's title on Mr. Lloyd's report of 30th November, 1806. The conclu-"sions at which Mr. Dick arrives are, that Tupraj Singh had been dispossessed of his "estates before the cession, and his agent admitted to engage without enquiry into his

" title, and he retained management for one year only; that the allowance was not " malikana in consequence of his exclusion, but a charitable allowance made because " he would be dependent upon a precarious income derived from certain Nuzzurs pre- " sented by the Padhans; that there is in this no acknowledgment of proprietary rights; " and that the estate was not brought under Court of Wards because Mr. Lloyd expressly " declares that it could not be, because Tupraj Singh was not in possession.

" He adds 'the opinions expressed in the report are not quite consistent, certainly,' " and that Mr. Lloyd alludes to the admission to engagements at a future occasion of " Tupraj Singh or his son, and he arrives at the conclusion that the plaintiff and his " father had no proprietary possession previous to Mr. Lushington's settlement. It is " to be regretted that this important report is not available, and the translation is " unauthenticated, and so obscure, that I can come to no conclusion as to its precise " meaning, and consider it unsafe to trust to it as evidence.

" Mr. Dick's conclusions can only be looked at as his construction of this report, " but are entitled to weight and have had much consideration from me; but I can- " not reconcile his conclusions with the subsequent history of the property as brought out " in evidence, and I consider him mistaken in arriving at a conclusion adverse to the " plaintiff's title.

" From the evidence, the precarious possession of the plaintiff's father at the time " of cession appears to have proceeded from his imbecility and unfitness to manage " his affairs, rather than from absence of title. Mr. Dick nowhere says that Mr. Lloyd's " report distinctly denies his title, but rather that there was nothing in it, in Mr. Dick's " opinion, to show acknowledgment of proprietary right; but I gather quite the contrary " from that portion of Mr. Dick's letter in which he states that Mr. Lloyd alludes to " the admittance of the family to engagements at a future time, for it is unlikely that " Mr. Lloyd would have written this if he repudiated their proprietary title.

" Mr. Lloyd's report, also, whatever it was, will have referred to the entire pro- " perty of the family, and if it repudiated their title, the repudiation will have extended " to the entire property; how then, does it happen that the family are still in proprie- " tary possession of a large portion ?

" I notice, also, that the possibility of an erroneous inference being made from " Mr. Lloyd's report is apparent from Mr. Dick's remark that the opinions expressed " in the report are not quite consistent, whilst it seems certain that he has fallen into " error when he states that the property was not under the Court of Wards; for it is " impossible to ignore all the evidence on this head, simply on a remark in Mr. Lloyd's " report which may have been misconstrued. It seems to me inconceivable, that if " Mr. Lloyd's arrangements regarding these estates were held to repudiate or question " the plaintiff's title, all the Government records should continue to have the family " entered as proprietors, and all the Officers of Government should look on them in " that light, particularly as Mr. Lloyd's proceedings were not lost sight of, for we find " them alluded to in different subsequent proceedings.

" I cannot, therefore, accept Mr. Dick's opinion in the absence of the report of " Mr. Lloyd, and in the face of what I conceive to be most strong evidence to the " contrary.

" The defendant has filed an extract from a letter from Mr. Lushington, Collec- " tor of Moradabad, 12th March, 1836, regarding the last settlement, to show a doubt " as to the plaintiff's title at that time, but the tenor of this report seems to me rather to " favour the plaintiff's case, and the writer, who was the Settlement Officer who affirmed " the plaintiff's title at the last settlement, is certainly not prejudiced in his favour, as " I notice a remark of his in reference to the necessity of admitting him to engage- " ments, that 'it was not easy to find an excuse for setting him aide.'

" Considering the whole of the evidence, I arrive at the conclusion that the plain-
" tiff's ancestor held proprietary title to these estates at the cession, and that it was
" recognised then and subsequently by the British Government; that Mr. Lloyd found
" Tupraj Singh to be imbecile and incapable of managing his affairs; and that, in the
" interests of the State, for the safety of the public revenue, and for the benefit of
" Tupraj Singh, the management of the property was taken out of the latter's hands,
" an allowance being made to him, the property eventually coming under the provi-
" sions of Regulation 52 of 1803; and that there was nothing in these proceedings to
" repudiate his title; but that it was on the contrary recognized.

" No other conclusion seems to me to be possible, considering the action of the
" different Officers of Government, and the official records I now proceed to notice
" how far the claim of the co-defendants in the fifteen estates can hold good against
" the plaintiff There is no case for them in all the estates except Nos. 8 and 9. They
" can only rest their claim on the gift of the title by Government; neither they, nor
" those from whom they succeed, were anything more than farmers, some but for a
" few years, and none for many years, and their admission of the plaintiff's title of the
" settlement will also estop them with regard to Nos. 8 and 9. The defendant Bishen
" Singh claims by right of a deed from an ancestor of plaintiff, and two pottahs, one
" from the Nawab Wuzeer, of 1203 Fusloe, and one from Mr. Lloyd, of 1810. The first
" is a gift of the 'Kasoomie zemindaree,' *i. e.*, dues payable to the landlord, but I can-
" no consider this to be conferment of proprietary title, while, on the contrary, it seems
" an acknowledgment of a superior title in the giver. The pottahs are mere leases, and
" confer no proprietary title, and this defendant at the settlement made no claim to
" the proprietary title, on the other hand, admitted it to be with plaintiff, and is so
" estopped.

" As to the forest tracts.

" The pleader of the principal defendant contends that since it is shown that the
" malikhana allowance on these tracts was discontinued in 1848, the term of limitation
" should date from them, and the suit will be barred. I find that the Government did
" discontinue payment of malikana in that year (see Canoongoe's evidence), but I hold
" that the period of limitation will date from the date of the Government orders
" in 1853, ordering its discontinuance, and I also think the judgment of the High
" Court in appeal in this case has already disposed of this point.

" On the general point of title, I find that the evidence upon which I have adjudged
" the plaintiff's title to estates Nos. 1 to 15, must hold equally in his favour in regard
" to these estates. There is the same proof of title at the cession, and recognition on the
" part of Government, and subjection to the Court of Wards, and malikana allowance
" to the proprietor. I think the reasoning as to the other estates applied also to these.
" There are, besides, other papers which show the recognition of the plaintiff's title and
" his proprietary possession, for instance, perwannahs of different Collectors addressed
" to the family, in which many of these estates are separately mentioned, and in a
" way to show their title; thus, in one, dues for catching wild elephants are directed to
" be paid to the family, in another, plaintiff's ancestor is held liable for arrest of
" criminals, &c.

" Mr. Dick has stated in his report, that Government had for a long time exer-
" cised proprietary right by collecting 'deyuth' or tax on jungle produce in these tracts;
" but, finding as I do that the estates were under Court of Wards, any collection of
" the kind must be held to have been made by the Collector in his place of adminis-
" trator for the proprietor.

" Mr. Dick also notices that the plaintiff can have no title to malgoozaree, what-
" ever he may have to malikana, in these forest tracts, with reference to Section 8, Regu-
" lation VII. of 1822, and I may state that of course any powers held by Government
" under Section 8, Regulation VII. of 1822, are unaffected by this Court's decision.

"With reference to Nos. 45 to 49 of these forest tracts, these have been sold by "Government, and purchased by the co-defendants, who contend their title cannot be "impugned; but I conceive that their contention is invalid. The plaintiff brought "forward his claim to these estates at the time of the sale proceedings, and it was open "to the defendants to have become aware of his claim.

"A question has occurred how far, with reference to Section 19 of Act XXIII. "of 1863, possession can be decreed in these estates, Nos. 45 to 49, but it appears to "me that the above Act refers to the special Courts only, established under Section 7, "and there being no such special Court, the suit becomes triable by the ordinary Civil "Court, to whose proceedings the act will not apply.

"Regarding the arrears of malikana claimed, it has been contended that the "Civil Court has no jurisdiction to decree an assignment of malikana, and a late "Sudder decision, dated 28th May, 1860, No. 123 (Kedar Singh *versus* Thakoorain, "widow of Chowdhry Oodeychund), is quoted; but I find that this decision refers "to assignment of malikana allowance to a talookdar, in case of conflicting talookdaree "and biswahdaree rights, in which the engagement for the revenue was made with the "latter, while in this case, there is no conflict as to title, but it is a case of malikana "assignable to a proprietor whose offer to engage for revenue has been refused, and "where the estates have as a consequence been farmed to strangers. In such a case I "conceive the Civil Courts have jurisdiction. There is a distinction between the malikana "given under Section 5, Regulation VII. of 1822, to proprietors of estates farmed, and "that under Section 10, Clauses 1 and 7 of 1822, in cases where several persons hold "interests of different kinds, the regulation enacts that in the former case the malikana "shall in no case be less than five per cent. on the jumma; this is the proprietor's right, "and can be enforced, in Civil Court, whereas the entire adjustment in the other case is "left to the Revenue Court. I find, therefore, in plaintiff's favour, and decree the arrears "of malikana claimed, with interest from date of institution of the suit.

"I may notice here a plea of the plaintiff's as to the finality of the Settlement Officer's "award in his favour in the settlement of 1836, as giving him an indisputable title, the "award not having been set aside by regular suit; but such an award requires confirm-"ation of the Government, with reference to Section 10, Act XIV., Clause 3, and Sec-"tion 16, Regulation VII. of 1822, before it can be held to be final, and as this con-"firmation was absent in this case, the claim was open to trial on the merits.

"The decree will be in plaintiff's favour, for declaration of his proprietary title in "all the estates except No. 16, Raipoor, barred by limitation, and for possession at the "termination of the 9th settlement, subject to the provisions of the regulations and acts "in force in regard to engagements for the Government revenue, and for the amount "of malikana claimed, with interest at six per cent. from the date of institution of suit "till payment.

"Defendants will bear their own costs, and costs of plaintiff in proportion to value "of each defendant's claim.

"R. C. OLDFIELD, *Officiating Judge*."

Present:
MORGAN, Kt., C. J.,
and
SPANKIE, J.

"The Collector of Bijnour on behalf of Government, and others (Appellants),

"*versus*

"Rae Himmut Singh (Respondent)

"Mr. Millett, Barrister-at-law, and Baboo Pearee Mohun Bannerjee, on behalf of "Government.

"Moulvie Furreed-ood-deen and Pundit Bishumber Nath, for the respondent.

"JUDGMENT.—This was a suit by Rae Himmut Singh for declaration of his pro-"prietary title in 49 estates in the District of Bijnour, and his right to possession of

"the same on the 1st July, 1866, the expiration of the current settlement. The "plaintiff also sought to avoid certain sales and alienations of a portion of the property, "and to recover arrears of malikana or proprietary allowance granted to him at the "9th settlement, under Regulation IX. of 1833, but withdrawn by the Collector on "the 5th October, 1853, under instructions received by that Officer from the Govern-"ment of the North-Western Provinces.

"The suit was originally tried by Mr. Lindsay, Judge of Moradabad, on the "3rd October, 1866, who held that the claim was barred by Clause 6, Section 1, Act "XIV. of 1859. The Court, however, on the 17th June, 1867, reversed the Judge's "order of dismissal, and remanded the case for re-trial on its merits. With respect to "one of the estates in suit, Raipoor-khas, No. 16, which it was alleged had been, "when in possession of a farmer, attached and confiscated on account of the latter's "rebellion, it did not appear clearly before this Court whether the whole proprietary "title, or the farmer's only, had been attached. The Lower Court, therefore, was spe-"cially directed to determine the point. The Judge had also rejected a minor plea "in bar of the claim respecting estates Nos. 45 to 49. No objection was taken to the "Lower Court's decision on this point, and the judgment of this Court accepted the "decision of the Judge, in regard to these estates, that the plaintiff's claim to them was "not barred by the special limitation provided in Act XXIII. of 1863.

"The estates Nos. 1 to 16 are known as 'desi,' or cleared lands, and in them "private persons set up a proprietary title adverse to plaintiff. Nos. 17 to 49 are "'jungle' or forest land, and in these the State claims to be sole proprietor; but it "is admitted that the Government has sold Nos. 45 to 49 to the parties now in pos-"session of them, and defendants to the suit.

"The plaintiff avers, that when Rohilkund was ceded to the British Government, "at the beginning of the present century, the estates in suit were owned by, and in "possession of, his father, Rae Tupraj Singh; that on the latter's death, his son, Jehan "Chund, succeeded to the property, and that after the murder of Jehan Chund, the "name of Gyan Koonwur, widow of Tupraj Singh, and, subsequently, the names of the "widows of Jehan Chund, were recorded in the Collector's Register of Landed Propriе-"tors paying revenue to Government; afterwards, in 1833, the name of the plaintiff was "recorded. The plaintiff also avers that, in consequence of the incapacity of Rae Tupraj "Singh to manage his own affairs, and during the minority of Jehan Chund, the "estates had been placed under the Court of Wards, an allowance of Rs. 4,058 per "annum being made for the maintenance of the family. It is stated this position "remained unchanged until the 9th settlement in 1836, when the Settlement Officer "acknowledged the plaintiff's proprietary title and right to engage for the Government "revenue. The plaintiff, however, found that the terms of the settlement were too "harsh, and the estates were farmed, and the farmers agreed to pay malikana at the "rate of five per cent. on their jummas to the plaintiff, in recognition of his proprietary "title. This allowance, it is alleged, was received by the plaintiff until 1853, when "the Collector, by an order of the 5th October, stopped further payments.

"It is contended on the part of Government that the plaintiff's father had not "possession of the lands in suit at the time of the cession; that plaintiff never "obtained possession; that his title had been erroneously admitted by the Settlement "Officer in 1836; that the proprietary allowance had been improperly granted, and "both title and malikana had been disallowed by the Board of Revenue; that the "estates had never been under the management of the Court of Wards; and that the "allowance was pensionary.

"The case of the other defendants virtually rests on the defence of the Govern-"ment.

"The Lower Court first dealt with the claim to Raipoor, No. 16, finding that the "entire estate had been attached and confiscated, without reservation of any right,

"consequently the plaintiff's suit in respect of this portion of the property, not having "been instituted within the time provided by Section 20, Act IX. of 1859, was "barred.

"After an elaborate judgment, the Lower Court decreed in favour of the plaintiff's "proprietary title in all the estates, except Raipoor, as well as possession on the expira-"tion of the settlement, subject to the provisions of Regulations and Acts in force "regarding engagements for the Government revenue. The Court also decreed the "arrears of proprietary allowance, with interest from the date of suit.

"The defendants in appeal contest the decision of the Judge, on the same grounds "as those taken by them in the Court of First Instance. On the part of Govern-"ment it is further contended that, as the Lower Court finds that the forest lands "have been held by Government since 1848, it should not have declared the plaintiff's "proprietary title to them, nor awarded malikana in respect of them. It is also urged "that the Judge's decisions regarding estates Nos. 45 to 49 is contrary to the provisions "of Section 19 of Act XXIII. of 1863, and that, under the terms of Sections 8 and 18 "of the Act, the Civil Court had no jurisdiction. The Judge had improperly refused "to admit evidence to show that the plaintiff or his agent had received a copy of the "Collector's order, as required by Section 5 of that Act. Lastly, the plaintiff should "pay his own costs.

"The plaintiff filed a memorandum of objections, under Section 348 of Act "VIII. of 1859, to that portion of the judgment which subjects his decree to the "provisions of Section 8 of Regulation VII. of 1822. This Section, he alleges, does "not refer to forest lands not belonging to or adjoining any particular mehal. "Exception is also taken to the Judge's remark that the Settlement Officer's recog-"nition of the plaintiff's proprietary title in the cleared estates would require the "Government sanction before it could be held to be final. This was a superfluous "remark, and might prove injurious to the plaintiff, inasmuch as the farmers never "had contested his title, and all that he sought for now was possession when the "settlement made with the farmers expired.

"We will first dispose of the objections taken under Act XXIII. of 1863, which "is one to provide for the adjudication of claims to waste lands. Sections 8, 18, and "19 of the Act refer solely to Courts constituted under the provisions of Section 7 "of the Act; and we agree with the Judge that, no such Court having been specially "constituted under that Section, the ordinary jurisdiction of the Civil Courts was "in no way barred. The objection as to jurisdiction was not seriously pressed, and "requires no further consideration. But it was more particularly urged that, under "Section 19, where land has been sold and the Court shall be of opinion that the "claim of the claimant is established, the Court is bound to order him as compen-"sation a sum equal to the price at which the land has been sold, but it is precluded "from giving him possession. As to this, we observe that it is only a Court consti-"tuted under Section 7 of the Act that is necessarily governed by the procedure laid "down in the Act. A Civil Court dealing with such a claim as the present is in "no way fettered by this Act, and it may be doubtful how far the Act applies to such "a case as this, in which no sudden claim to waste land proposed for sale has been "raised, but, on the contrary, the plaintiff's claim has been before the Government "from 1802, and has been repeatedly and continually acknowledged by its officers "by payment of malikana or proprietary allowance. We have already intimated our "opinion that the judgment of this Court in the former hearing of the appeal did "not permit the re-opening of the plea in bar of the suit respecting properties Nos. "45 to 49, under Section 5 of Act XXIII. of 1863. This being the case, we think "there was no impropriety in the refusal of the Judge to admit evidence to show "that the plaintiff had received information of the Collector's order to deal with "these estates. If such evidence had been in existence when the suit was first heard,

"it should have been then produced; or, if there was any good and sufficient reason "why it was not so produced, a review of the judgment in respect of this part of "the case might have been prayed for. But no exception was taken, on appeal to "this Court, to the Judge's ruling that the plaintiff's claim to be heard respecting "these estates might have been admitted had the suit been wholly barred by Section "1, Clause 6 of Act XIV. of 1859; it is too late now to ask that evidence may be "put in to prove that the provisions of Section 5 had been complied with.

"As to the merits, we see no reason to differ from the conclusion at which the "Judge has arrived. There is a mass of evidence on the record from which the "Lower Court has found that the first settlements of the cleared estates, and in some "instances the second, were made with Rae Tupraj Singh, either in his own name or "through his agent; that subsequent settlements were made with various farmers; "that the names of the plaintiff and his predecessors have been continuously recorded "in the Collector's registers from the time of the cession; that, owing to the imbe-"cility of Rae Tupraj Singh, and the minority of Jehan Chund his son, the property "was managed by the Court of Wards, and this state of affairs continued till 1836; "and that the Revenue Officers during all these years have never questioned the "proprietary title of the family, but freely effected mutation of names, whenever "it was necessary to do so, in favour of different members of the family on their "succession to the property. The Judge has also found that, in 1836, no claimants "appeared to contest the proprietary title, and the farmers, with whom the Settle-"ment Officer made arrangements for the revenue, acknowledged his title, and paid "him an allowance as proprietor. These conclusions are supported by evidence which "the proceedings of the Government Officers subsequent to the settlement of 1836 "have entirely failed to discredit. It is shown that at the time of the cession Rae "Tupraj Singh was in possession of large estates, and that the Government of the day "acknowledged in the fullest sense his proprietary title. This acknowledgment is to "be found in a letter, dated 2nd July, 1807, from the Secretary of the Board of Rev-"enue, in reply to a report from the Collector of Moradabad. From this letter it is "clear that the Governor-General affirmed the arrangements made by the Collector "for the security of the public revenue of the estates of Rae Tupraj Singh, and sanc-"tioned an allowance of Rs. 4,058 yearly for his support. We also find that seven "years after this sanction the Collector, on the 20th May, 1814, informed the wife of "Rae Tupraj Singh that the settlement of Pergunnah Nujeebabad and of the zemin-"daree estates was in progress, and that he was giving farming leases in consequence "of the imbecility of the Rae, but that she might engage on her own account, if she "pleased, or through her agent, for the payment of the Government demand. There "seems to be no reason to doubt the genuine character of this perwannah, for the imbe-"cility of the Rae is apparent from other evidence, which shows that the Rae's estates "had been placed under the charge of the Court of Wards. The Collector's letter of "the 19th August, 1820, to the Secretary of the Board of Commissioners, indicates "that the allowance of Rs. 4,058 yearly was continued to Rae Tupraj Singh until his "death in 1817. Then the Revenue authorities, for reasons set forth in the letter, "withheld a moiety of the allowance for the benefit of the Rae's minor son, but as-"signed the other moiety to the widow for her own support and that of the family. "In this communication the allowance is expressly called 'zemindaree nankar;' and "it is stated that it was paid because Tupraj was a disqualified proprietor. At this "time it is almost impossible to doubt that the estates of the Rae, cleared and forest "lands, had come under the management of the Court of Wards, in accordance with "the provisions of Section 3 of Regulation 52 of 1803. The Regulation is expressly "referred to in this letter, and in other exhibits. For instance, there is a 'perwan-"nah' or written order issued by the Collector on the 28th December, 1820, to Ranee "Gyan Koonwur, widow of Tupraj Singh, requiring the attendance of her son Jehan, "Chund, and asking why he had not, as directed, appeared before the Collector to "give information on certain points connected with the Court of Wards. Again, a

" letter of the 19th December, 1822, from the Assistant Collector to the Secretary of " the Revenue Board, forwarding a report upon a petition of Jehan Chund, now of " age, soliciting payment of a moiety of the allowance that had been withheld by the " Collector, shows the continuance of the other moiety to the Ranee, and is a proof " that the Collector had been managing the property during the minority of Jehan " Chund. This he would not have done in any other capacity than as representative " of the Court of Wards. Sanction was given to the payment of all sums at Jehan " Chund's credit by the Board of Revenue on the 13th January, 1823.

" Next, we trace the continuance of the proprietary allowance in 1829, when " Ranee Gyan Koonwur endeavoured, after the murder of Jehan Chund, to obtain a " larger payment. There is on record a roobakaree of the Commissioner, Mr. Boldero, " dated 18th December, 1829, on the petition of Gyan Koonwur, in which he gives a " history of the estates, and the details of the settlement made first with Rae Tupraj " Singh, and afterwards with the farmers up to date. During all these years the " family enjoyed the proprietary allowance, for in no other light can it be regarded, " though at one time said to be for the support of Rae and his family, and at " another time, pensionary. We find the Rae disqualified by incapacity to manage his " own estates. In consequence of this inability, arrangements were, as we have " seen, made for the security of the public revenue assessed on his estates, which " past, under Regulation LII. of 1803, to the charge of the Court of Wards. Moneys " were laid out for the benefit of the minor son, and finally, on his becoming of age, " were returned to him. It is idle to say there is no evidence of the interference of " the Court of Wards, and no recognition of the proprietary portion of Tupraj Singh " and his descendants.

" We next come to the year 1833, when the Collector, on the 29th April, is " found recording the name of the plaintiff himself as proprietor and zemindar on the " mehals of Nugeena, Akrabad, Keerutpore, Nujeebabad, and Mundawur. A list of " the estates comprised in these pergunnahs was given when the mutation of names " took place, and that list includes all these estates which now form the subject of " the present suit. The settlement of 1836, under Regulation IX. of 1833, now fol- " lows; and in this settlement, Mr. Lushington unequivocally recognises the plaintiff's " proprietary title in all the estates, cleared and forest, and assigns malikana to him, " to be paid by the farmers with whom the estates had been settled in consequence of " the plaintiff's inability to engage for them. The roobakaree of the Settlement Officer " in itself would be sufficient proof of the plaintiff's position at this time, and of the " arrangements made with the farmers; but evidence has been adduced in support of " the plaintiff's title in all the cleared estates. It is unnecessary to refer to all this " evidence in detail; it is on record, and not denied.

" The same evidence of title to the forest, as well as to the cleared estates, is to " be found in the record. There is the same recognition of Rae Tupraj Singh at the " time of the cession, the management of the tracts by the Court of Wards, mutation " of names in favour of the members of the family in the Collector's registers, and the " continuance of malikana to the family and the plaintiff himself until the year 1848. " We also have the Collector's order of the 19th February, 1814, addressed to Jehan " Chund and Gyan Koonwur, informing them of the mookuddum of Mouzah Bha- " goowallah, who apparently was holding a lease of the estate, and calling upon them " to offer for the payment of the Government revenue; at the same time they are in- " formed that the estate would lie under the Court of Wards, but the Collector ex- " presses his readiness to appoint as manager anyone of whom the family approved. " Again, there is another order of the 12th December, 1821, in which Jehan Chund " is styled proprietor of the villages included in the Nujeebabad pergunnah, in which " all the forest estates in suit are situated. The order is addressed to some persons, " named therein, who had prepared pits for the capture of elephants, and who, hitherto, " in the exercise of their calling, had been accustomed to pay certain forest dues to

" the farmers and not to the proprietor; they are directed to pay these dues in future " to the latter, and not to the former. In 1844, the Deputy Collector, Kalee Rae, is " found acknowledging the right of Himmut Singh, the plaintiff, in Narawalla in the " Nujeebabad forest, and raising his proprietary allowance from 2½ to 5 per cent. on " the jumma; and we gather from Mr. Collector Dick's letter of the 13th May, 1851, " that this increased allowance was general, and extended to all the forest estates now " in suit. We have already seen that Mr. Lushington, in 1836, admitted the pro- " prietary title of the plaintiffs in these estates; when, making the 9th settlement, these " properties were farmed to one Ahmud Shah, who agreed to pay malikana. This was " what is called a lump settlement, and it recognised the plaintiff's zemindaree title " in all the farms and forest lands. It is not too much to say that Mr. Lushing- " ton's settlement, though not approved by Government, must be taken, in spite " of a certain vague and loose mode of writing referred to by Mr. Secretary Thomason " in his letter of the 2nd December, 1837, as a recognition of the plaintiff's title " alike to the cleared and forest properties; and it may be assumed that he came to " this opinion after full enquiry and examination of the records then available. It is " a significant fact in favour of Mr. Lushington's conclusions, that the plaintiff's pro- " prietary title does not appear to have been contested during these settlement pro- " ceedings.

" It is true that the Government has never admitted Mr. Lushington's settle- " ment of 1836, so far as it accepted the plaintiff's position as zemindar; but the pro- " prietary allowance was made yearly. A revision of the settlement appears to have " been ordered on the 20th December, 1837. The Secretary of Government, in a " communication to the Secretary of the Board of Revenue, directs a further enquiry " into the rights of the proprietor's title as regards the cleared and forest estates. " After this we can find no further evidence on the part of the Government or its officers, " until the 28th December, 1844, when the Government again pressed a revision of " the settlement records. We are unable to say what subsequently passed. A gap in " the correspondence occurs until 1851, when Mr. Collector Dick, on the 13th May, " 1851, submitted a report to the Board of Revenue, referring indeed to some former " correspondence, of which, however, no copies are on the record. In this report, Mr. " Dick impugns the title of Rae Himmut Singh to the cleared estates, and he is led " to do so after a perusal of Mr. Collector Lloyd's report of the 30th November, 1806. " From this report he concludes—1st, that Tupraj Singh had no proprietary possession " of his estates; 2ndly, that his agent was erroneously permitted to engage for them; " 3rdly, that the allowance given to Tupraj Singh was charitable, and not proprietary; " 4thly, that the Court of Wards never had charge of the estates. Mr. Dick, also, " refuses to acknowledge the plaintiff's title to the forest lands: he contends that the " recognition of his title at the time of the cession was a 'mistake;' he admits that " under this mistake the malikana was continued, first at 2½ per cent., then, whilst " the estates were held under the Collector's immediate superintendence, at a less rate, " and finally at 5 per cent., when, as shown above, Kalee Rae, Deputy Collector, " increased the allowance.

" Mr. Dick disposes of Mr. Lushington's settlement report very summarily. He " observes that the plaintiff cannot claim under it because the award there made has " been shown, by subsequent changes in the amount of the allowance, to have been " only in force as long as the lease of Ahmud Shah, the farmer of the time, continued; " he then goes on to remark that, even if the plaintiff be entitled to malikana in conse- " quence of the settlement of 1836, he would not be so to the malgoozaree or right of " engaging for the revenue, inasmuch as if he had undoubted title to be considered " proprietor of the land, his exclusion would be legal, under Section 8 of Regulation " VII. of 1822.

" Now, it must be observed that the Court has not an authenticated copy of this " report before it; it has only that translation of the document which the defendant

" himself has put in on behalf of the Government, and which is understood to have been " used in a former suit connected with a portion of this property, and to have been pre- " served by the then Government pleader, and transferred by him to the officer now " holding that appointment. The Judge states that this translation is so obscure that " he came to no conclusion as to its precise meaning, and he considers that it would " not be safe to trust it as evidence. But Mr. Dick himself admits that the copy of " Mr. Lloyd's report that he had seen is not free from obscurity. He remarks, that " the opinions expressed in it 'are not quite consistent, certainly.' With this admission " before us, we feel that Mr. Collector Dick's own conclusions may not have been " drawn with reliable correctness from a report avowedly not consistent in its state- " ments, and it is possible that the obscurity by which the translation is marked may " be due in some measure to the inconsistencies in the report itself, as well as to inac- " curacy in rendering it from English into the Vernacular. We think, however, that " the plaintiff's case rests on other evidence than Mr. Lloyd's report of 1806, even if " that report was more favourable to his claim than the defendant is willing to allow. " But, admitting the translation now on the record to be a true rendering of the origi- " nal report, we should yet be disposed to regard it as beneficial rather than injurious " to the plaintiff's case, inasmuch as this report undoubtedly led to the grant of the " allowance by the Governor-General, and upon it was founded all the action of the " Revenue authorities from 1806 to the settlement of 1836, a period of 30 years, during " which no doubt of the plaintiff's title appears to have been suggested; certainly none " as accepted. Surely, with these facts before us, it is difficult to conclude that Mr. " Lloyd's report deprived the plaintiff's father, Johan Chund, and himself, of their " proprietary title.

" We have been asked to regard this recognition of the plaintiff's title for such a " period as 30 years, up to 1836, as one long mistake, from which Government was at " liberty to disconnect itself in 1837, even though after that date it did not finally de- " termine that there had been a mistake until June, 1853.

" In support of the plea of error, and with a view to suggest a doubt of the plain- " tiff's title, the principal defendant filed an extract from Mr. Lushington's letter of the " 12th March, 1836. But we concur with the Lower Court in regarding this letter as in " no way injurious to the plaintiff. In the 12th paragraph it is stated, that 'one of the " ' largest landed proprietors in this pergunnah is Rae Himmut Singh, whose name " ' was mentioned in my report on the settlement of Pergunnah Mundawur, and whose " ' qualifications to manage his own estates are thought doubtful. Various public func- " ' tionaries have entertained various opinions. He has frequently visited me, and " ' though little accustomed to the transaction of business, he is certainly not, what " ' most public documents style him, of weak intellect. At the time of settlement, he " ' advanced his claim to engage for the revenue of his own estates. As he had already " ' been admitted in Mundawur, it was not easy to find an excuse for setting him " ' aside. In many instances, however, his estates had been in the hands of mookud- " ' dums since the cession, and it appeared now scarcely fair to oust them in favour of the " ' zemindar. Long possession had established for them a sort of prescriptive right to " ' manage the villages, and moreover they cheerfully pay a jumma which the zemin- " ' dar would not easily realize.' These remarks are in truth an unwilling admission " of the plaintiff's zemindaree title, though a plea for the right of the mookuddums " to engage for the revenue. They show that the Settlement Officer would have set " him aside, if he could have done so, in favour of the mookuddums, who would " cheerfully pay a more considerable jumma, but it was not 'easy to find an excuse for " doing so.' We may add, that in this letter, the allowance is treated directly and " without hesitation as malikana, and, as the Settlement Officer must have had " before him the best information then available, the fact is very significant.

" With the evidence, both as regards the cleared and forest lands, which we have " already before us, we cannot accept the plea of error. No man's title would be

"secure if, after the lapse of years, and after continuous recognition by itself and its "officers of proprietary title and possession, the Government could with impunity set "aside the proceedings of all those Officers, under the plea that they had acted through-"out under error; still less is it to be tolerated, that where a family has been, as it "appears to have been in this instance, treated as the proprietor of large estates, and "allowanced as such, in consequence of disqualifications which debarred its members "from engaging for the public revenue of their estates, such an allowance, after fifty "years of enjoyment, may be construed to be one granted out of charity, and not of "right. It is impossible to doubt, from the language of the public letter which we "have quoted, that the estates of Rae Tupraj Singh, and his minor son, were under "the Court of Wards; and, if this were so, even if the Governor-General's Orders "in 1807 did not sufficiently acknowledge his proprietary title, there could beno fur-"ther question as to the nature of the allowance then assigned to him, and continued "to the family. Mr. Collector Dick himself admits this in his letter of the 18th May, "1851, paragraph 28, where, referring to the estate Tatarpoor Laloo, he allows, that "if the estate had been under the Court of Wards, the fact would, in his opinion, "'have constituted possession.' With respect to the alteration from time to time "made in the amount of malikana paid to the plaintiff on account of the forest lands, "it is sufficient to remark, that the last act of the Revenue authorities in 1844 was, "as we have seen, to increase it from 2½ to 5 per cent., which, if it meant anything, "certainly signified that his superior title was not considered to be a weak or doubt-"ful one.

"We think that the foregoing observations sufficiently dispose of the appeal on "its merits. We now proceed to discuss the particular plea, that, as the Government "had held the forest lands since 1848, the Lower Court should not have declared the "plaintiff's proprietary title in these, and should not have awarded malikana in respect "of them. This plea, we remark, is virtually one of limitation; and our former "decision may be said to have determined it in favour of the plaintiff. We may, how-"ever, add, that from and before 1848, the right of the plaintiff to these lands, as also "to the cleared estates, was still awaiting the final orders of Government, and that "these orders were not given until June, 1853. Clearly, therefore, if the plaintiff's "title be admitted, he is also entitled to the malikana claimed on account of these "lands. Now, as to the last plea that the plaintiff should pay his own costs. The "plea is supported solely by the fact that he has been a long time in bringing this "suit; and this is so, but the circumstances which led to this delay are not before us, "and it may well be that the dilatory action of the Government has impoverished "him, or there may be other sufficient reasons for his procrastination. The suit is "within time, and, taking a decree, he is entitled to costs.

"There now remains nothing more in this case for consideration except the memo-"randum of objections filed by the plaintiff (respondent). Mr. Oldfield, in his judg-"ment, notices a remark of Mr. Collector Dick to the effect that the plaintiff could "have no title to the malgoozaree of the forest lands, as the Government would be at "liberty to make their own arrangements for their management, under Section 8, "Regulation VII. of 1822. The Judge adds, that of course any powers held by Gov-"ernment under this section would remain unaffected by his decision. The plaintiff's "counsel argue that the section referred to would not apply in the present case, *i. e.*, "to forest lands not belonging to or adjoining any particular mehal. There is nothing "in this objection which needs to be discussed at this time; the Judge's observations "cannot prejudice the plaintiff, who limited his claim on the forest lands to a declara-"tion of proprietary title as zemindar, and to recover the arrears of malikana withheld "from him. The question, therefore, even if there be one, which the respondent "now seeks to open, does not arise. The plaintiff has not claimed possession. Lastly, "exception is taken to the remarks of the Judge relating to a plea of the plaintiff's, "that the Settlement Officer's award was final, and pointing out that such award was "not so until it had been affirmed by Government. These observations of the Judge

"have no bearing upon the case, and in no way affect the plaintiff's interest in the "future. He sued to establish his proprietary right to the villages specified in Sche- "dule A., that is the cleared estates, and also his right to possession of them on the "expiration of the current settlement, *i. e.*, from 1st July, 1866. This claim is "decreed in fifteen estates, his title to Raipoor (No. 16) being disallowed. Having "thus determined all the questions raised in this appeal, it only remains for us to dis- "miss it, with costs, and interests at six per cent., affirming the judgment of the "Lower Court in all respects."

23. This case is not only important as involving a very considerable estate, but it is also commended to the notice of District Officers as instancing the absolute necessity, when they are conducting suits on the part of Government, of their putting in evidence in support of the pleas they adduce. It seems to be a not uncommon impression among Government Officers, that the mere fact of putting in a plea as to facts is sufficient of itself, without supporting such a plea by evidence of the facts asserted.

24. In the suit brought by Rae Himmut Singh against Government, the plaintiff had claimed, amongst other estates, certain properties which he alleged had been illegally sold as grants of waste land by the Collector.

25. It was contended on the part of Government, with reference to these grants, that the claim was barred by Section 5 of Act XXIII. of 1863 (for the adjudication of claims to waste lands); Rae Himmut Singh, who had objected to the proposed sale of these waste lands, having failed, after the Collector's final order rejecting his claim, to put in notice in writing to the Collector that he intended to contest the order as prescribed by Section 5 of the Act.

26. Unfortunately the Collector, Mr. Palmer, neglected to give evidence that he had caused a copy of the order rejecting Himmut Singh's claim to be furnished to the latter, as prescribed in Section 5, Act XXIII. of 1863, and the Judge, having no evidence before him on this point, found that Section 5, Act XXIII. of 1863, did not bar the present claim to the properties in question (45 to 49); the Judge, however, added, "Had he (the Collector) acted in conformity with law, the plea would have been "good, but he did not cause a copy of his order to be given to the plaintiff." There was evidence to prove that the Collector had caused the plaintiff to be furnished with a copy of his (Collector's) order throwing out this claim, and had this evidence been adduced, the Government contention would have prevailed. In the first appeal before the High Court, when Judge Lindsay's decision was contested, this point was not brought out in the arguments of the Government pleader; and when, on the case being remanded, Mr. Millett (for Government) attempted to plead the bar under Section 5 of Act XXIII. of 1863, he was not allowed to bring forward evidence which, as the Judge remarked, should have been brought forward before Mr. Lindsay. The High Court, also, in the final appeal, agreed with Judge Oldfield in holding that evidence on this subject was then inadmissable; and the result has been that Government lost its case, though it had a good legal defence to the claim preferred by Himmut Singh in regard to these properties. This is all the more to be deplored as Government had sold the estates in question to a third party. Except on this point, the Board have no reason to be dissatisfied with the management of the case, but they cannot exempt Mr. Palmer, the Collector of Bijnour, from the grave responsibility he has incurred by his omission to supply evidence in support of the pleas he had urged, and they must leave it to His Honor to take such notice as he thinks proper of the Collor's neglect. They would propose, with His Honor's sanction, to issue a Circular Order drawing particular attention to this and to another case, and at the same time to forward a copy of extract, paragraphs 3 and 4, from the despatch of the Right Hon'ble the Secretary of State for India, dated 11th June, 1868, No. 24, which was called forth by a similar neglect to provide evidence in a case conducted on behalf of Government by an officer in the Patna Division, in Bengal.

Seth Dheeraj v. Major Hankin, 4th Cavalry, and Government.

27. This case was decided against the plaintiff by the District Judge. The plaintiff has since preferred an appeal to the High Court, which had not been decided at the close of the year. The Board, however, have since learned that the judgment in appeal has been in favour of the Government, but they have not yet obtained a copy of the decision. The case will be noticed in the next year's Report.

28. The case of Nizam Begum *versus* Government was referred to in the last year's Report, when the Board commented upon Mr. Drummond's perfunctory discharge of his duties in reference to this and other cases.

It will be seen from the accompanying decision in a case on all-fours with that of Nizam Begum *versus* Government, and where the land claimed is situated in the same village as is that which Nizam Begum sued to recover, that had the appeal been preferred in time there is every reason to believe it would have resulted in favour of the Government:—

"The Collector of Bareilly (Defendant), Appellant,
"*versus*
"Syud Mahomed Kyoom (Plaintiff), Respondent.

Present
PEARSON
and
SPANKIE, J.J.
4th August, 1868.

"The suit is for the recovery of damages on account of the demolition of the "plaintiff's house and of the land on which the house stood, and some other tak,* "land which he alleges to have belonged, and to belong, to him. He avers that his "house was knocked down, and that he was dispossessed of the land claimed, in 1858, by "the British army. The limitation law applicable to that part of the suit which claims "to recover, in the shape of damages, the value of the materials of the house, is in our "opinion, Clause 16, Section 1, Act XIV. of 1859, and it is clear that the claim to "damages, not having been brought within six years, cannot now be entertained.

"As regards the land which is claimed, the defence is that it was confiscated in "1858. The Lower Courts have held, however, that it was not confiscated, and the "Lower Appellate Court has held it to belong to the plaintiff, and both Courts have "held Clause 12, Section 1, Act XIV., and not Section 20, Act IX. of 1859, to be appli-"cable to the claim, and the claim to be within time, and have decreed it.

"But the decision of the Lower Courts appears to us to rest on the ground that "the order of confiscation did not refer to the plaintiff's rights, as he was not a rebel, "and that the action of the troops in knocking down the house, did not amount to a "dispossession of the land.

"It is represented in the Commissioner's letter to the Magistrate of Bareilly, "dated 13th January, 1862, that the land therein referred to was seized as forfeited. "This material point has not been considered by the Lower Courts. The question for "them to determine in dealing with the limitation plea was, not whether the land in "question was ordered to be confiscated or not, nor whether it belonged to the plaintiff, "or to the rebel Meean Jan, but whether it was taken into the possession of the "Government in virtue or under colour of any order of confiscation, or whether, irres-"pectively of any such order, the Collector wrongfully took possession of it. If it "should appear that it was seized in pursuance of any order of confiscation, the find-"ing that it belongs to the plaintiff, and was not included in the confiscation order, "assuming such finding to be right, will not save the suit from being barred by the "provisions of Section 20, Act IX. of 1859.

"The case is remanded through the Lower Appellate Court to that of First Instance, "for a fresh trial in respect of the land claimed in advertence to the foregoing remarks.

Sic in orig.

"The costs of this appeal in respect of that claim will be costs in the cause, and follow "the event of the trial.

"The appeal in respect of the damages claimed is decreed, with costs in all the "Courts, and interest at 6 per cent.

"F. B. PEARSON, *Judge.*
"R. SPANKIE, *Judge.*"

29. An application for review of judgment has since been preferred. The following were the pleas put in:—

"Nizam Begum *versus* Government.

"Defendant prays, under Section 378, Act VIII. of 1859, for a review of judg-"ment in the above case, decided in appeal by the Judge on 12th December, 1867, "on the following grounds, the application being written on the stamp paper pre-"scribed for plaints:—

"1*st.*—In the decision of the High Court in case No. 952, decided on 4th August, "1868, Government, appellant, *versus* Syud Mahomed Kyoom, respondent, it has been "ruled that the claim as regards 'damages for the value of the materials of the house' "is barred under Clause 16, Section 1, Act XIV. of 1859, as the house in this suit was "demolished in 1858, and as the action was brought *in forma pauperis*, in January, "1866, *i. e.*, after a lapse of 7 years and 8 months. Plaintiff's claim should also be "thrown out as barred by efflux of time.

"2*nd.*—As the claim is for recovery of possession, but as such possession over the "land in suit has remained with Government since the date of confiscation, and as "the facts of confiscation and attachment are established by the letter of the Magis-"trate of 13th February, 1862, an enquiry should, under the precedent cited above, be "made into the case.

"Inasmuch as the suit was decided by the Judge on 12th December, 1867, and "the decision of the High Court above referred to, holding that the entire village was "confiscated to Government, was not passed till the 4th August, 1868, defendant prays "for review of judgment.

The Judge has rejected this application, and his order being final, under Section 378 of the Civil Code, is not open to appeal.

30. It will be observed from the High Court's decision in Syud Mahomed Kyoom *versus* Government, quoted above, that the Judge of Bareilly, notwithstanding the High Court's decision reversing his judgment in Mahomed Bahadoor Khan *versus* Government (quoted at paragraphs 46 and 47 of last year's Report) has not comprehended the bearing of the special limitation proviso contained in Section 20 of Act IX. of 1859.

31. Considering the number of confiscations that were made after 1857 in the Rohilkund Division, it is specially unfortunate that the Judge at the headquarters of that Division should have failed to grasp the meaning of the important section prescribing the time within which suits in respect of property attached or seized as forfeited, or liable to be forfeited to Government, may be instituted.

Munnohur Lall *versus* Captain Jackson and Secretary of State.

32. This case is noticed, not as presenting any interesting point of law, but as a further illustration of the damage inflicted on Government by the erroneous procedure and carelessness of its officers.

A suit was brought by the Public Works Department at Allahabad to recover certain money advanced to a contractor who had undertaken to deliver a fixed quantity of stone at the Allahabad Fort, and had failed to deliver this quantity. This claim was

decreed in favour of the Department by the Sudder Ameen; but the decision was appealed by the contractor, and the judgment of the Subordinate Court was set aside by the Judge. The Judge's decision is given below :—

" Munnohur Lall (Defendant), Appellant,

" *versus*

" Government (Plaintiff), Respondent.

" CLAIM in appeal against Rs. 507-14-3, price of certain stones, for which a decree " has been passed by the Lower Court.

" The grounds of appeal are :—

" 1*st*.—That the decision of the Lower Court is against the merits of the case " and proofs brought by the plaintiff, as well as against those bills (which were signed " by Mr. Nonly, Assistant Engineer, an authorized officer) after the measurement, in " which the quantity of stones is entered to be 48,487 cubic feet, with its value.

" 2*nd*.—That the Principal Sudder Ameen's, considering the above-mentioned bills " to be merely forms, as stated by Mr. King, is quite contrary, as up to that time " bills of the same sort were considered a sufficient guarantee. No other description of " bills were produced to prove them as forms. The other description of bills directed by " the Principal Sudder Ameen cannot have a retrospective effect.

" 3*rd*.—It is evident that appellant supplied 48,487 feet of stones of higher value " at the request of Government, and received only Rs. 4,707 out of the real price, " and there is still a large amount due to the appellant.

" The facts of this case are related in the record by the Principal Sudder Ameen " who tried the case. They are briefly these :—

" A contract was entered into by the Executive Engineer with the appellant for " the supply of a certain quantity of stone. The terms and rates are in the tender. " The documents affecting this case appear to be: 1st, the specification; 2nd, the contract " binding the contractor to the terms of the specification; 3rd, the printed forms of " receipts in use in the Public Works Department when material is delivered to the " contracting officer; 4th, the form of receipt accepted by the officer of the Public " Works Department, when money payments are made to the contractor.

" The quantity that should have been supplied, according to the statement of the " respondent, was one lakh of cubic feet of stones, but (I observe that the tender for " this quantity is not in the record of this case. It is with the respondent, and " has been shown to the Court. The appellant, however, admits that he makes no " objection to the absence of the tender, he goes on the documents above stated) the " uantity suplied actually is stated by the respondent to be 38,180 cubic feet, worth " Rs. 4,199-12-0. The sums paid amount to Rs. 4,707-11-0, which sums the Execu- " tive Engineer (respondent) says were paid on approximate measurements made by " the officers of the Department.

" The appellant has, therefore, according to respondent's statement, received an " excess beyond what was due of Rs. 507-14-3, for which this suit was instituted.

" The appellant files four receipts, aggregating Rs. 4,707-11-0. His claim stands " on the specification, the contract, and three of these receipts. (The 4th receipt " is for Rs. 200, and is evidently a supplementary payment of Rs. 200, remaining " unpaid from the principal receipt A).

" The tender is the only paper which shows the actual quantity contracted for, " and the rates; the specification is in general terms; the contract is to the tender " and specification combined.

"As far as these documents are concerned, it appears that the appellant had "actually delivered over to the Government officer, in Department Public Works, "the quantities stated in the receipts, and received payment for them. The receipts "are very elaborate, as are also the contract and the specification. There seems to "be no departing from the wording of the receipt, which is precise in its wording. "A certain kind of materials, a certain quantity, worth a certain sum, has been actu- "ally received. The officer in charge of the Sub-division 'certifies that the above "claim is correct, and that the materials have been received.' He signs this certificate.

"The superior officer, the Executive Engineer, countersigns this certificate in "another binding form, again stating the value of the materials supplied. In one "bill the same officer appears in the double capacity, as in charge of both offices.

"The back of the receipt is endorsed with the contractor's receipt of the money "paid for the materials supplied.

"As I have above said, these receipts are all the Court has to go on, as the other "documents are in general terms.

"The respondent contests the accuracy of these receipts, saying they are only "payments on approximate measurements, according to the custom of the Depart- "ment; that the payments are made (and were made in this case) before the rubble "was regularly stacked in boxes, and when the material was in irregular conical "heaps, and that it is the custom of the Department to make payments on such "approximate measurements, and to verify them afterwards, when accounts are "adjusted.

"I can see nothing in this custom to authorize me to reject the formal docu- "ments presented by appellant, or to accept as approximate only what appears to me "to be an accurately drawn form, containing precise quantities and sums, and a "double verification by two competent officers, from whose office the contract was "given, and who make the payments.

"I do not see that the tender, specification, or contract, permit me to admit the "latitude contended for by the respondent, to accept as approximate, under the cus- "tom of his Department only, what the forms of his Department seemed carefully "framed to exclude. There is no mention anywhere of the custom of approximate "measurements, and I therefore decline to accept it, the practice of the Department, "which seems formed from its actual necessities, with its forms, from which the "officers cannot depart. If the custom of the Department is accepted in one case, "as holding good against formal written contracts or receipts, it is evident the con- "tractor may be met at every term with a similar plea, and his written agreements "and receipts may be reduced to waste paper. If it is the case, there appears to me to "be no possibility of reconciling.* The custom may be all very well within* accurate "or easy-going contractors, but any others need not feel themselves bound to accede "to it.

"Under these circumstances, I decree the appeal on the receipts A., B., C., as "against the adverse custom.

"I observe the reply to the appeal was never submitted to the Legal Remem- "brancer by the Executive Engineer, but only to his Departmental superior. The "Executive Engineer informs me that the Superintending Engineer considered a "reference to the Legal Remembrancer as unnecessary.

"*April* 14*th*, 1868. "G. RICKETTS, *Offg. Judge.*"

33. The result has been that the Public Works Department has been adjudged to pay the contractor Rs. 525-13-11, balance of bill, and Rs. 130-14-6 costs, which was

* *Sic* in orig.

decreed by the Judge on 14th April, 1868. It will be observed, as noticed by the Judge, that the Public Works Department did not consult the Government Legal Remembrancer in this matter, though directed to do so in all cases. Without giving any opinion on the merits of the claim preferred by the Public Works Department, the Board would point out that whether the Executive Engineer had a good claim or not, the Government has suffered. If, as is contended for the Department, a less amount of stone was supplied by the contractor than was shown in the receipt granted to him by the Executive Engineer, the receipts are so faulty that they show a larger quantity received than was delivered; while, if they are not faulty, as held by the Judge, and if the Judge's construction was wrong, then evidence might have been brought to show that they only represent approximate measurements, and the Judge's decision might have been contested. Here, again, the Government interests have been sacrificed, as the term of appeal has been allowed to expire without any attempt having been made to set aside the Judge's order.

Government *versus* Luchmun Dass, Zillah Bareilly.

34. This suit will be noticed more at large in the next year's Report. At present I am merely to state what were the circumstances which have compelled Government to come into Court as a plaintiff.

The entire village of Mukrundpoor was confiscated for the rebellion of its inhabitants. One Luchmun Dass obtained a decree against a certain Syud Massoom, and in execution of his decree sought to sell a portion of Mukrundpoor as the property of his debtor.

The Government entered a *caveat*, as the entire village had been confiscated ten years back. The Court in which execution of the decree was sued out overruled this objection, and it became necessary for Government to institute a suit to set aside the sale which took place under the orders of the Court.

Ameer Ally *versus* Dr Rennie, Accountant-General of Calcutta, and others

35. This was a very remarkable case. The facts which gave rise to it are as follows:—

Government Promissory Note No. 18598, belonging to the 5½ per Cent. Loan of 1859-60, for Rs. 22,000, was issued in the name of Dr. Rennie, as in original loan acknowledgment.

He transferred the note, in 1860, to Dowlut Abadee Khanum, who had lived with him while he was in India, for her maintenance. She died on 22nd May, 1862, in Cawnpore.

The Magistrate took possession of all her property, including the note, as *lawaris*, and made it over to the Civil Court, which did not think it *lawaris*, and struck off the case on 4th June, 1862.

On 5th August, 1862, Mr. G. E. Lance, then Magistrate of Cawnpore, made over the property, with the note, to Mukdoom Beg and Ahmud Beg, sons of Futteh Beg, and Chand Beg, son of Badul Beg, who declared themselves to be heirs of Dowlut Abadee Khanum. Ahmud Beg made over the note to Dr. Rennie.

On 15th December, 1862, Dr. Rennie applied to the Judge of Cawnpore for a certificate of administration, under Act. XXVII. of 1860, and on 24th December, 1862, obtained it from the Judge. Under authority of this certificate, he drew interest of the note from the Cawnpore Treasury, on 24th December, 1862.

On 3rd January, 1863, Chand Beg applied to the Judge for certificate, but his application was rejected.

On 4th February, 1863, Dr. Rennie obtained a duplicate of the note from the Accountant-General, stating that the original had been lost, under a bond of indemnity, in which he declared upon his honour that he had not transferred the note, either by a special or blank endorsement.

On 18th May, 1863, the order of the Judge granting the certificate to Dr. Rennie was annulled by the Sudder Court, whose decision provided that the "appellant, Chand Beg, and any other claimants, are at liberty to make fresh application for a certificate to the Court below."

It appears that no such application was made, nor was any such certificate obtained by anyone.

On 22nd June, 1863, by letter No. 88, the Judge of Cawnpore informed the Accountant-General of Calcutta of the annulment of the certificate to Dr. Rennie.

On 19th June, 1863, Ameer Ally, mooktear of Chand Beg, sent copy of the Sudder Court's order, dated 18th May, 1863, to the Accountant-General, Calcutta.

On 18th December, 1863, he sent copies of the above papers to the Accountant-General, Bombay, and prayed that payment of future interest for the 10th half-year be stopped.

Copy of this was forwarded for order to the Accountant-General, Calcutta, who, under advice of the Advocate-General, did not stop payment of the interest.

On 15th July, 1868, the rights and interests of Chand Beg in the note were sold, in execution of a decree of Ameer Ally, dated 5th January, 1868, for Rs. 9,505, and purchased by Ameer Ally himself for Rs. 2,950.

On 5th November, 1868, Ameer Ally instituted the present suit, by which he sought to obtain the duplicate note and arrears of interest.

36. The following pleas were put in, with the result that the suit was dismissed with costs by the High Court:—

In the order of the Sudder Court, dated 18th May, 1863, aforementioned, it was laid down that the appellant, Chand Beg, and any other claimants, are at liberty to make fresh application for a certificate to the Court below.

No such application was made by anyone, nor any certificate obtained, and no suit was instituted by any person to establish his right of inheritance to the deceased lady's property. Therefore, the present suit of the plaintiff, without proving that Chand Beg was the sole legal heir of the deceased lady, cannot be maintained.

There is a misjoinder of parties in this suit; Government ought not to have been made a co-defendant with Ahmud Beg and Dr. Rennie.

The plaintiff has no right to sue for a duplicate note as against Government. The issue of new in place of lost notes is an arrangement for the public convenience, but it is not a matter of legal obligation.

As the plaintiff has chosen to claim the duplicate note which was issued in favour of Dr. Rennie, on 4th February, 1863, he has thus recognized and adopted the renewal, and consequently can have no claim against Government.

If this suit be treated as a suit for damages for the conversion of the lost note, then the claim is barred by the law of limitation.

The above circumstances clearly show that Government has been unnecessarily made a defendant in this case. Therefore, Government prays that Government be exonerated from the plaintiff's claim, and the costs of Government be made payable by the plaintiff.

37. This was a suit to set aside the order of the Magistrate of Ghazeepore prohibiting the burning of dead bodies at a ghât used for bathing purposes, and where the people of the city of Ghazeepore were in the habit of drawing water.

Baboo Sheo Sahae and others v. Magistrate of Ghazeepore.

A Dom, it appears, petitioned the Magistrate that he was entertained to burn dead bodies at the "Thornhill Ghât" (a handsome bathing-place erected by a former Collector of the place), and that he was apprehensive of being assaulted by others who interfered with the execution of his duties. On this, the Magistrate had the ghât inspected, and as the custom of burning dead bodies where people came to draw water and to bathe appeared on the face of it objectionable, he directed a notification to be issued for the suppression of the nuisance, as required in Sections 308 and 309 of Act XXV. of 1861, giving ten days for objectors to show cause why this order should not be enforced. Objectors did appear, but they failed to satisfy the Magistrate that the order was not reasonable or proper, nor did they petition for a jury to be appointed to try the propriety or order. The Magistrate's order was therefore carried out. This suit was then brought to set aside the order in question.

Before deciding upon defending the case, the Board referred the matter to Government, and, with His Honor's sanction, have since contested the suit successfully before the Subordinate Judge of Ghazeepore and the High Court.

The High Court (Pearson and Turner, J. J.), noted as follows :—

"Assuming the suit to be cognizable, we do not consider that the objections which "are taken to the order on the merits are of such a nature as to warrant the Civil Courts "interfering with that order. It may be true that for many years the practice now "prohibited has subsisted, but, having been formerly innocuous, it has now become "dangerous to the health of the public, by reason of the increase in the population of "the city in that quarter.

"This being so, we cannot hold that good and reasonable cause was not shown "for the prohibition. The omission of the Lower Appellate Court to pass an opinion "on a point so obvious is immaterial.

"The appeal is dismissed with costs, and interest at 6 per cent."

Baboo Lall and Duttee Lall v. Lieutenant N. M. Horsford, Superintendent of Police, and Narain Singh, City Inspector.

38. This is a singular case and would appear to be the first occasion that an Officer of Government has been put on his defence for defamation of character in the discharge of his duties.

The defendants were police officers of high position at Allahabad, Lieutenant Horsford being District Superintendent, and Narain Singh the Head of the City Police. It is the practice of the police to keep up a register in which are entered the names of persons residing in the police jurisdiction who are suspected to be bad characters, or those on whom the police are to keep an eye.

The defendant entered the names of the plaintiffs in this register, and the suit in question was instituted with a view to recover Rs. 11,000 (£1,100), as damages for defamation. The Government was not impleaded in this case, but, after a review of the circumstances, the Government pleader was instructed to defend the defendant Horsford; the question as to the expenses incurred in the defence being reserved till the judgment of the High Court was delivered.

The decision of the High Court was as follows :—

"Baboo Lall and Dutti Lall (Plaintiffs),

versus

"Lieutenant Horsford and Narain Singh (Defendants).,

Present
TURNER and SPANKIE, J. J.
20th June, 1868.

"This suit was instituted by two persons, Baboo Lall and Dutti Lall, claiming "damages from the defendants, Lieutenant Horsford, late Superintendent of Police at "Allahabad, and Narain Singh, the Kootwal of Allahabad, for the injury occasioned

"to the plaintiffs' character and reputation by the entry of their names in Police Re-
"gister No. 10, which is better known as the "Budmash List." It is alleged by the
"plaintiffs that the defendant Lieutenant Horsford caused the entry to be made
"through malice and without reasonable cause; and that the defendant Narain Singh
"procured the entry to be made by furnishing a false and malicious report for that
"purpose.

"When the case came on for hearing, it occurred to us that objection might be
"taken to the form of the suit by reason of the joinder of the plaintiffs. They have,
"it is true, long traded in co-partnership, and the acts by which they alleged they have
"been injured were acts which affected both. At the same time, we hold that they
"ought to have brought separate actions to recover damages for the several and sepa-
"rate injuries which they allege they have sustained. The plaintiff Baboo Lall might
"be able to show that the defendants bore malice to him; and that, by reason of that
"malice, they had contrived an act, under colour of their office, by which he had suf-
"fered substantial injury. On the other hand, the plaintiff Dutti Lall might be unable
"to establish that the action of the defendants as against him was other than a proper
"performance of their duties, or that it was in any way prompted by malice, or that
"in consequence of it he was in any degree injured. Of course the case we have put
"is purely hypothetical, and we do not intend to say that there is any distinction in
"the present instance between the cases of both the plaintiffs. We put forward a sup-
"posed case to illustrate the objection which, in our opinion, applies to the form of
"the suit. The defendants have, however, waived the irregularity, and have consented
"that the cases of both the plaintiffs should be tried in one suit. We, therefore, pro-
"ceed to give our decision on the merits, and first, we proceed to state the facts which
"are, in our judgment, proved by the evidence before us.

"Prior to the month of July, 1867, the plaintiffs appeared in the Criminal Court
"to answer charges of dishonesty which had been brought against them. The plain-
"tiff Baboo Lall stated in his evidence that within the last ten years he may have been
"charged five, seven, or even ten times. In no instance is it shown that they were ever
"convicted of an offence; and in some of the cases, the records of which have been
"filed, it certainly appears to the Court that there was little ground for the institution
"of a criminal charge.

"In July, 1867, a boy was found drowned in a well, and an enquiry was made by
"the Police as to how he came by his death. The affair happened in the neighbour-
"hood of the plaintiff's residence; and the Inspector, the defendant Narain Singh, who
"eventually took the matter in hand, considered that the plaintiffs, who were men of
"position in the mohulla, could afford the Police some clue, and that through their
"influence the investigation of the Police was baffled. He accordingly arranged an
"interview with Baboo Lall, and, as he says, he threatened him that he would get a bad
"name if the facts were not brought to light. Now, there is nothing before us to show
"that there was any truth in the suspicion of the Police Officer as to the interven-
"tion of the plaintiffs in opposition to the Police. It is now admitted that the boy's
"death was accidental, and the plaintiff Baboo Lall states that he was at the time of
"the occurrence absent from Allahabad. It is not alleged by either of the defendants
"that either of the plaintiffs was in any way connected with the case; nor it is shown
"that either had any more information than was possessed by the Police. This inves-
"tigation took place in the month of July. On the 27th August, the defendant Lieu-
"tenant Horsford issued an order directing an enquiry into the character of the plain-
"tiffs at the time of the issue of this order. Neither of the plaintiffs was personally
"known to Lieutenant Horsford. He is not shown to have had any cause of malice
"against them; nor, indeed, is it suggested on the part of the plaintiffs that at this
"time any such malice existed. Lieutenant Horsford states that he issued the order
"in consequence of reports unfavorable to the character of the plaintiffs which had
"come to his knowledge as District Superintendent of Police.

"On the 29th August, Lieutenant Horsford held a preliminary enquiry in a case "in which two persons, Doorga Pershad and Tussuddook Hossein, were charged with "bribing an official of the jail. This enquiry was held in the presence of the accused, "the defendants' mohurrir, and Mr. Smelt, who appeared on behalf of the accused. "Lieutenant Horsford admits that on this occasion he said to the prisoners: 'Now, "'tell the whole truth of the case. I feel convinced you were sent here by Baboo Lall "'Dutti Lall, and that you are nominally guilty. I think you are here on the part of "'Baboo Lall Dutti Lall, and if you will tell the whole truth, I will lay the whole before "'the Magistrate.' Lieutenant Horsford states,—and the Court fully believes him,— "that he made this address to the prisoners because he 'thought it was a shame that "mere subordinates should be punished." At the same time, the Court must express its "condemnation of the course pursued by Lieutenant Horsford—a course for which the "law gives no sanction; and it would be most unfortunate were it otherwise, for no- "thing could tend more to foster that evil which brings scandal on our administration "of justice in this country than to permit Police Officers, under the colour of holding "a preliminary enquiry, to offer inducements to persons accused of crime to implicate "other persons of whom suspicion was entertained. People are unfortunately too "ready, without any encouragement from the Police, to shift the blame from their "own shoulders by bringing false charges against others, and do not require the "encouragement to do so which they would receive from the knowledge that their false "charges would coincide with the suspicions and gratify the wishes of the authori- "ties. Mr. Smelt says that Lieutenant Horsford at this enquiry also made "use of other strong language in reference to the character of the plaintiffs; but "we are not satisfied that Mr. Smelt has not mixed up what occurred on the "occasion to which we are referring with the occurrences in the Magistrate's Court "a few days later, when Doorga Pershad and Tussuddook Hossein were put on "their trial before Mr. Cornwall. Lieutenant Horsford attended to prosecute them, and "Mr. Smelt appeared for the prisoners. It would seem that after the preliminary "enquiry, Mr. Smelt had communicated to the plaintiffs what had been said about "them by Lieutenant Horsford, and that they had informed him of their in- "tention to lay a criminal charge for defamation against the District Superinten- "dent at the close of the case. Mr. Smelt informed Lieutenant Horsford of the "plaintiffs' intention, upon which Lieutenant Horsford became much excited; and, "as Mr. Cornwall deposes, used language the reverse of complimentary with respect "to the plaintiffs. Mr. Cornwall does not remember the words used, save that he "recollects Lieutenant Horsford stated something to the effect 'that he would look "'after them.' The plaintiffs, pointing to this threat, and to what happened subsequently, "contend that their threat to institute proceedings was the cause of the malice which "they impute in this suit to Lieutenant Horsford. With this we shall deal subsequently. "With reference to the case of Doorga Pershad, we have only this to add, that when "before the District Superintendent the accused, in answer to the offer made to them, "denied that the plaintiffs had any concern in the matter, and there is nothing to show "that they were connected with it. On the 10th September, the defendant Narain "Singh, in pursuance of the order he had received, presented his report as to the result "of his investigation into the plaintiffs' character. In that report there is mention "made of the affair of the death of the boy and the interview had by the Inspector "with Baboo Lall, and mention is also made of a case which had then recently been "before the Magistrate, and in respect of which this Court *subsequently* quashed the "Magistrate's order. We fail to discover from the report any indication that Narain "Singh was actuated by malice, or that he did not, to the best of his ability, fairly "comply with the instructions he had received.

"Subsequently other orders were passed by the District Superintendent, calling for "records with a view to ascertain the character of the plaintiffs, and eventually, on the "9th November, he passed an order at the foot of a proceeding, which order and pro- "ceeding have led to the institution of the present suit.

"The recorded proceeding is, we are forced to confess, a most remarkable produc-
"tion. It has been frequently read and referred to in the course of the trial, and it is,
"therefore, unnecessary for us to allude to it at length: suffice it to say that it imputes
"to the plaintiffs the habitual commission of the gravest offences. It not only refers to
"matters which have been investigated and decided in Court, but it alludes to other mat-
"ters, for which, if they could be substantiated, the plaintiffs would merit the severest
"punishment. Lieutenant Horsford was examined as to the sources from which he
"composed this extraordinary proceeding, and from his answers, which were given in
"the most candid manner, the Court can come to no other conclusion than that Lieu-
"tenant Horsford did not use such care and caution in investigating the rumours which
"had come to his ears as he ought to have done before he recorded as matter, not of
"suspicion, but of fact that the plaintiffs had habitually committed the most serious
"offences.

"The proceeding concluded with the order that the plaintiffs' names should be
"entered in the Register of Bad Characters. The plaintiffs contend that the object of
"that order was to blacken and defame their characters. Such was, if it became known,
"unquestionably the effect of the order; but we cannot agree with the plaintiffs in
"their contention in this matter. The proceeding recites that the object of the order
"was to enable the Police to watch the plaintiffs; and if this was,—and for reasons
"which we shall presently detail, we believe that it was,—the object of the defendant
"in passing the order, then it was passed for an object which is sanctioned by the
"orders issued under the authority of Government.

"We think it proper to state in this place the opinion which is entertained by us,—
"and we believe we may say also by the other learned Judges of Court,—with respect
"to the legitimate use which may be made by the Police of Register No. 10, which is
"more generally known as the Budmash List. For the protection of the public, it has
"been found necessary in every civilized State to constitute certain persons officers for
"the prevention and detection of crime; and to render them efficient, it has also been
"found necessary to confer on them powers of interfering with the liberties of their
"follow-citizens, which, if exercised by private persons, would render them liable
"to civil proceedings. It is necessary for the efficiency of the Police that they should
"possess information of the names of persons who are likely to commit offences; and,
"inasmuch as changes must of necessity constantly take place in the members who
"constitute the Police Force, it is also necessary that the information above-mentioned
"should be preserved. To effect this, registers are ordinarily kept showing the
"names of persons who have committed, or who on strong grounds are suspected of
"the commission of, offences. Such a register, accurately compiled, and strictly reserv-
"ed for the purpose for which it is designed,—the private use of the Police,—may be of
"great advantage to the public, enabling the Police to perform their duties effectually.
"But if this register be a public register, or if the persons having the custody of it
"allow its contents to be matter of public conversation, we can imagine no greater
"engine of injustice and oppression. The matter recorded is not confined to facts
"which have been ascertained by fair and open investigation in Courts of Justice. It
"does, and necessarily must, in a great measure consist of the results of *ex-parte* inves-
"tigations made in private by the Police. It is, and necessarily must be, in great part
"the fruit of rumour and suspicion, and sometimes it may be of malice. Were it
"permitted that such register should be kept to which the public might have access,
"or of which the entries were bruited about, the characters of honest men might be
"blasted without redress through the instrumentality of any enemy who could gain
"the ear or excite the suspicions of the Police. Very shortly after the establishment
"of this Court, the abuse of this register was on more than one occasion prominently
"brought to its notice. It had at that time (and we fear the evil has not even yet been
"cured) come to be regarded as a public register, and Magistrates not unfrequently
"passed orders directing the entry of a person's name as a kind of punishment. The
"Court, on the 9th August, 1866, addressed the Government of these Provinces on the

"subject, and pointed out the probabilities and magnitude of the evils of which "we have above made mention, and the Government promptly passed an order that "entries should only be made by the District Superintendent, or Magistrate *in his capacity* "of *Superintendent of Police*, and directed that the register should be considered a *pri-* "*vate register*, and should only be open to inspection by officers of police. In the "present case, had the orders of Government been obeyed in spirit as well as in letter, "although the plaintiffs might have been unjustly recorded, they would not have been "greatly damnified; but no sooner was the entry made than it became known that it "had been made. The plaintiffs applied for and obtained a copy of the proceeding "and the order, and imputing the order, not unnaturally, to Lieutenant Horsford's "anger at their threat of proceedings for defamation, they instituted this suit, in "which they have throughout asserted that their object is to clear their characters "from the imputations cast on them. Now, although the plaintiffs may be able to prove "that there was not sufficient justification for the entry of their names in the register, "it by no means follows that they are entitled to obtain damages from the defendants "for the injury which they may have suffered. Public officers, acting *bonâ fide* in the "execution of the duties entrusted to them, are not in all cases liable to make compen-"sation to an individual for the injury which may result to him from their official acts; "they are not liable, if in the exercise of a discretion which is entrusted to them, they "act with somewhat less wisdom or care than would be exhibited by more able or more "diligent officers. If it be shown that, actuated by malice and without reasonable "cause, they have abused the powers entrusted to them, then they are deprived of the "protection which they would otherwise have been entitled to claim. It cannot be "doubted that both the report made by the defendant Narain Singh, and still more "the proceeding and order of the defendant Lieutenant Horsford, contained matter "defamatory of the plaintiffs' character. It will be necessary, therefore, that we should "consider whether the occasions on which the report and order were made protected "the defendants from all liability to the plaintiffs, and whether the privilege which "would be conferred by the occasion has been lost by any express malice brought "home to the defendants, or either of them; and we think it best to deal with the case "of each defendant separately. First, as to Narain Singh. His superior officer, in the "exercise of the power vested in him, called for a report, which this defendant was "bound to furnish; and, in compliance with that order, he furnished a report. Whether "the statements to the prejudice of the plaintiffs contained in that order be true or not, "we can find no evidence which justifies the allegation that the report was framed out "of malice to the plaintiffs. If the defendant Narain Singh had borne any ill-will to "the plaintiffs because he thought they had impeded his investigation into the circum-"stances of the boy's death, it is reasonable to suppose that he would have exhibited his "ill-will at the time of the investigation in July, and would not have waited until the "end of August, or beginning of September, when his report was presented; nor do we "see any indication of malice in the fact that this defendant inserted in his report his "suspicions, which suspicions may subsequently have been proved to be unfounded "as against the defendant Narain Singh. We, therefore, decree that the plaintiff's "suit be dismissed with costs. Next, as to the defendant Lieutenant Horsford. "As a District Superintendent of Police, he had power, under the orders issued "by Government, to enter the names of suspected persons in the register. That "he directed the entry to be made is not denied, and that he had a discretionary "power to make the entry, we consider proved. Did he exercise his discretion "maliciously, and without reasonable cause? Did he exercise a fair discretion— "fair, not in the sense of correct, but fair in the sense of honest? The plaintiffs—and "it is a point in favour of their character—were personally unknown to the defendant "Lieutenant Horsford, and no cause is suggested by the plaintiffs why he should bear "them hostility, as having arisen before the day subsequent to the 29th of August, "when the case of Doorga Pershad was under trial by the Magistrate. But it was "on the 27th August that Lieutenant Horsford passed the order directing that the "plaintiffs' characters should be investigated. On the 10th September he received the

"report of the Inspector; and, if he had been then under the influence of malice, he "might on that very day have directed the entry of the plaintiffs' names. He not "only did not do so, but continued his investigation until the 9th of November, when "he passed the order. The investigation was by no means thorough, nor was it so "careful as it should have been, and the merest rumours and suspicions were recorded "as facts; but it must be remembered that Lieutenant Horsford was not framing a "judicial proceeding. He believed, and however wrongly, yet, as we think, conscien-"tiously, that the plaintiffs were persons of bad character who should be watched by "the police, and he recorded the information he had received concerning them, and the "opinion he had formed of them. In the performance of this official act, we do not "believe that he was influenced by malice or by any other motive than the desire to "do his duty. It is not shown that he intended to go one whit beyond the order of "Government requiring the register to be kept as a private register. There is "nothing to show that he was in any way instrumental in divulging the fact that the "entry had been made. He has appeared before us as a witness. He has frankly "admitted much that told against him; but he has fully satisfied us that in whatever "he did he was actuated by proper motives. We, therefore, hold that he cannot be "made responsible in this suit for what may be considered to have been a mistaken "exercise of the discretionary power entrusted to him. We have now to deal with "the question of costs. On this point we must consider whether the plaintiffs have "come into Court with a case which they must have known would fail, or whether "there has been anything in the acts and conduct of the defendant which justified "them in instituting these proceedings.

"The plaintiffs found their names entered in the list of bad character by reason of "an order which was accompanied by a proceeding. In that proceeding, not only were "charges recorded which had been brought against them and had failed, but the result "of the charges was not recorded. Other crimes, too, were imputed to them with which "they had never been charged; and no one can read the proceeding without arriving "at the conclusion that, on the face of it, it appears highly coloured and exaggerated; "nor, when the plaintiff Baboo Lall presented himself for cross-examination were any "particular charges brought to his notice. Looking at this proceeding, and looking at "the conduct of Lieutenant Horsford when engaged in the preliminary enquiry of which "the plaintiffs had received a report from Mr. Smelt—looking, moreover, at what took "place in the Magistrate's Court, when, according to Mr. Cornwall's evidence, Lieuten-"ant Horsford had abused them and threatened to look after them, we cannot say that "the conduct of Lieutenant Horsford did not afford the plaintiffs some grounds for "believing that their names had been entered maliciously, and that they had reason-"able grounds for instituting this suit. We, therefore, in dismissing the suit as against "the defendant Lieutenant Horsford, do not award that his costs be paid by the plain-"tiffs. It remains for us to add a few words with respect to the character of the plaintiffs. "They have [as they have admitted] been on several occasions charged in the Criminal "Courts. On all occasions the charges have been dismissed, and there is nothing to "show that they have not been properly dismissed. In this country, private malice too "frequently finds vent on the institution of criminal charges. In one case heard by "Mr. Dale, which is with the record, the matter of the complaint was clearly more fit "for investigation in a Civil rather than in a Criminal Court. The plaintiff Baboo "Lall has tendered himself for cross-examination, and nothing was elicited to the "prejudice of his character.

"The plaintiffs have called before the Court numerous witnesses, some of them "persons of position and respectability who have had dealings with them, and in some "instances to a large amount, and these witnesses all speak to their good character for "honesty. Therefore, we feel ourselves justified in saying that, although the plaintiffs' "suit has been dismissed, there is no good and sufficient ground for supposing them to "be persons over whom, in the interests of society, it is necessary for the police to "keep any special watch and ward. We have no doubt that our remarks will have

"weight with the Police authorities at Allahabad, and that the plaintiffs may return to "that city without any fear of molestation; at the same time the plaintiffs must bear in "mind that persons who have ever been charged with offences are ever thereafter "liable to be suspected, and that it will be to their own interest carefully to guard "their conduct so that no reason or ground for suspicion may be afforded."

"C. A. TURNER, *Judge.*
"R. SPANKIE, *Judge.*"

39. As the Court found that the defendant had acted *bonâ fide*, the Government, on the representation of the Legal Remembrancer, has defrayed Mr. Horsford's costs.

40. In their last year's Report, (para. 52), the Board were compelled to notice the mode in which the Commissioner of Rohilkhund discharged his duties in regard to suits in which Government was concerned. It is with regret that they are again compelled to draw His Honor's attention to the same subject.

41. In the case which I am now to notice, the Government interests have been more than imperilled by the Commissioner's dilatoriness.

Teeka Ram, *versus* Government.

The following is a *precis* of the circumstances in which this suit originated :—

Previous to the mutiny, the village of Mohunpore, Pergunnah Ritcha, was owned by the co-sharers whose names and holdings are detailed in the margin.* Balances accrued, and the village was farmed to one Babur Khan, said to be a creature of Oomrao Begum, the principal co-sharer. In 1858, the entire village was confiscated to Government in the names of the zemindars and of the farmer, for their having taken an active and prominent part in the late disturbances. Subsequently, an action was brought against Government in the special Commission Court by Oomrao Begum for the realease of her share in the village, amounting to 16 beegahs 18 biswahs 18¾ kutchwansees. The plea on which the action was defended by Government is transcribed in the margin.† As there could be no doubt of the farm, and as the term of the said farming lease extended to 30th April, 1865, the claim was rejected with costs.

	Bee.	Bis.	Khs.
Oomrao Begum, ...	16	18	18¾
Ajeeb Begum, ...	1	16	7¼
Tuzzul Begum, ... } Sofanee Begum, ... } Hoseinee Begum, ... }	0	6	3¼
Enayet-oollah Khan, ...	0	6	3¼
Asif Juma Khan, ...	0	6	3¼
Nuthchnee Dass, ...	0	6	3¼
Total, ...	20	0	0

† "The property of the appellant has by order "of Government, as a punitary measure for default, "been transferred in farm for a period of ten years. "This farm will not expire until the 30th April, "1865 The appellant has no claims to restoration "until the expiration of the appointed period of "farm."

In February, 1863, a recommendation was submitted to higher authority for sale by auction of the rights and interests of the rebel farmer. Government sanctioned the proposal, and after issue of the usual proclamations, the property was put up to auction on 20th August, 1863, and knocked down for Rs. 5,000 in favour of plaintiff, Teekaram, to whom possession over the village was also given in due course.

In the sale notification, both English and Vernacular, published in the *Government Gazette*, rights and interests were advertised for sale, *vide* extract given in the margin. A like distinction appears in the sale registers; but in the sale proceedings, a copy of which was given to plaintiff in lieu of a conveyance, no such distinction was made; on the contrary, it goes to show that the entire village was sold.

Number	Number in the Confiscation Register.	Pergunnah.	Mouzah.	Name of former Proprietor	Area in acres.	Jumma.	Authority for sale.
						Rs	
22	359	Ritcha,	Mohunpoor, rights and interests of farmer.	Babur Khan and Asufzuman Khan.	721	1,250	Government Order No. 266, dated 24th April, 1863
70	628	Ditto,	Asajee in Mohunpore.	Hyder Khan, ...	18	97	

On expiration of the term of the original farming lease, Mussumat Oomrao Begum renewed her suit for the release of her share, and obtained a decree for the same from the Court of the Principal Sudder Ameen. The auction-purchaser appealed to the Judge, but with no better result.

Of these proceedings taken against Teekaram by Mussumat Oomrao Begum, Government had no intimation whatever; but on their conclusion, Teekaram brought his action against the Government to recover the sum of Rs. 4,236-11-6, being the value of Oomrao Begum's share in the village of Mohunpore, estimated on the purchase-money paid by him, as he alleged, for the entire property.

The Collector recommended that the case should be compromised; but, looking at the value of the property, which was assessed to pay Rs. 1,250 per annum as Government revenue, Board declined, on the information then supplied, to accede to proposals which had been made without advertence to this point.

They called for further information, to enable them to decide on the course to be pursued; and, in consideration of the discrepancy between the sale notification and the proceeding recorded after sale, eventually desired the Collector to offer to compromise the case—Teekaram to receive back his Rs. 5,000, and to surrender the portion of Mohunpore that remained in his possession, *i. e.*, nearly a-quarter of the entire estate.

The Collector reported Teekaram's agreement to these terms, and the Government sanctioned the course proposed.

On the 27th May, 1868, the Collector reported to the Commissioner, that Teekaram refused to abide by the terms of the compromise.

On the 20th July, the Commissioner forwarded Collector's letter (and some further correspondence which had taken place between Collector and himself, the date of the last letter being the 26th June), to the Board.

The case, however, had been heard by the Civil Court on the 10th of the month, or ten days before the Commissioner made his reference to the Board, and had been decided *ex parte* against Government; no defence having been put in on behalf of Government, though there was a good defence on the facts and in law.

The result has been that Government has been compelled to pay Rs. 4,236, and costs; and there is no possibility of the decision being set aside.

42. It will be seen from the above, that had the Commissioner passed on the Collector's letter dated 27th May, when he first received it, or even a month later when the Collector's letter of the 26th June was received in his office, there would have been ample time for the Board to have sent instructions to the Collector as to the line of defence to be pursued.

The Commissioner did not do this. The Collector's letters were not forwarded to the Board till the 20th July, or ten days after the case had been decided *ex parte* against Government, and they were then forwarded with a routine letter.

The Board are unable to exonerate the Collector of Bareilly from blame in this case. But had the Commissioner merely passed on the Collector's letters, and the Collector had a right to expect that this at least would be done, the Government interests would not have suffered.

43. This being the case, and the Board having been compelled on a former occasion to bring the Commissioner's remissness to the notice of Government, they are driven, to their extreme regret, to request the attention of Government specially to the Commissioner's failure to protect the public interests.

44. In conclusion, I am to state, that the Board have reason to be satisfied with the appointment of Baboo Pearee Mohun as Government Pleader, in succession to Lalla Man Rae, whose resignation was noticed in their last year's Report.

I have the honour to be,

SIR,

Your most obedient Servant,

W. CHICHELE PLOWDEN,

ORDERS OF GOVERNMENT ON THE REPORT OF THE LEGAL REMEMBRANCERS, N.-W. P., FOR 1868-69

No. 121A. of 1869.

FROM

R. SIMSON, Esq.,

Secretary to the Government, North-Western Provinces,

To

W. C. PLOWDEN, Esq.,

Secretary to the Board of Revenue, North-Western Provinces

DATED NYNEE TAL, THE 13TH OCTOBER, 1869

SIR,

JUDICIAL DEPARTMENT (CIVIL.)

I AM directed to acknowledge the receipt of your letter No. 958, dated the 31st August last, being the Report of the Board of Revenue in their capacity of Legal Remembrancer, for the year 1868-69, and in reply am desired to communicate the following observations and orders —

2. The Lieutenant-Governor regrets to find that the notice taken last year of the Commissioner of Benares' delay in submitting his report, did not prevent its recurrence, and he will be called upon for an explanation.

3. The total number of cases instituted during the year was greater than that in the previous year, *viz.*, 156 as compared with 143. The increase is altogether in suits instituted by Government, *viz.*, 55 to 30. The suits against Government have fallen off from 113 to 101; and it may be apprehended that the decrease is owing, not so much to improved administration, as to the present excessive standard of stamp charges. These form no obstacle to litigation on the part of Government, but a very serious obstacle to private parties bringing Government into court.

4. His Honor concurs in the remarks of the Board, in paragraph 12, regarding the appeals preferred by Government. The results are not satisfactory, and show both want of judgment in making the appeals, and originally, also, it may be feared, a bad case. The Lieutenant-Governor apprehends that there is too ready disposition on the part of Government Officers to prosecute cases in a spirit of litigation. This is not the position which Government ought to take up. Ordinarily, and unless some very special reason exists, the decision of the first Court should be accepted. It is not becoming in Government to betray a party spirit, and the spectacle is not edifying of Government frequently appealing with the general result of being cast in the end.

5. The Lieutenant-Governor shares in the hope that in future years the number of applications for costs will still further decrease, and that District Officers will use their best endeavours for this end.

6. With reference to the number of suits to set aside the orders of the Administrative, Settlement, and Magisterial Officers, it is to be observed that the decrease may in part be ascribed to the heaviness of the stamp charges, as well as to better administration.

7. In regard to paragraph 18, I am to request that the Commissioner of Rohilkhund may be called upon to explain whether, in the statement of costs submitted by him, only the costs incurred in the decided cases have been shown, or the costs of all the cases instituted.

8. The Lieutenant-Governor approves the Board's proposal, in paragraph 26, to issue a circular calling the special attention of Government Officers to the mischief

which may result from neglect to produce evidence to prove the several pleas advanced by them, and to the responsibility which they consequently incur.

9. As regards the case of Rao Himmut Singh *versus* Government, there seems to be little doubt that the interests of Government were seriously affected through mismanagement, and Mr. Palmer's neglect appears reprehensible. But, before deciding what notice should be taken of it, it is proper that he should have an opportunity of urging anything which he may have to say in defence. He is at present absent on furlough to Europe. The Board are requested to take measures for procuring any explanation he may see cause to offer.

10. On the subject of the remarks in paragraph 33, I am to observe that the Public Works Department has made arrangements for a due correspondence between its Officers and the Revenue Officers, which will obviate any such inadvertences as are apprehended.

11. In reference to the Board's comments on the case of Teeka Ram *versus* Government, I am to state that there was culpable delay on Mr. Drummond's part in reporting progress. An explanation has been received from the Commissioner, from which it would seem that the *laches* was mainly due to the Collector's failure either to take action, or keep the Commissioner informed. The Board will report further after considering this explanation.

12. In conclusion, I am desired to express the satisfaction of His Honor at the good account given by the Board of the manner in which the new Government Vakeel, Baboo Pearee Mohun Banerjee, has entered upon his office.

I have the honour to be,
SIR,
Your most obedient Servant,
R. SIMSON,
Secretary to the Government, N-W. P.

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